(16,929.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 344.

FRED STEARNS, AS COUNTY AUDITOR OF AITKIN COUNTY, MINNESOTA, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA ON THE RELATION OF JAMES N. MARR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

	Original.	Print.
Citation and service	*a*	1
Writ of error	*c*	1
Assignment of errors	*f*	2
Bond on writ of error	*i*	3
Caption	1	4
Transcript from district court	1	4
Petition for mandamus	1	4
Demand	5	4
Order for alternative mandamus	7	7
Writ of mandamus	8	8
Answer	12	10
Exhibit A—Ballot used at general election of 1896	41	25
Findings of fact	44	28
Conclusion of law	64	38
Judgment	65	38
Settled case	66	39

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	Original.	Print.
Extracts from journal of senate	67	39
Exhibit A—Proceedings before senate committee on elections	77	45
Testimony of Mr. Bullet	79	47
Admissions	94	54
Stipulation as to case	96	55
Judge's certificate to case-made	96	56
Notice of appeal	97	56
Waiver of bond	98	56
Syllabus	99	57
Opinion	101	58
Judgment	124	70
Order for judgment	126	71
Minutes of argument and submission	128	72
Clerk's certificate	131	72

a United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein Fred Stearns, as county auditor of the county of Aitkin, State of Minnesota, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, this 21st day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

To the State of Minnesota.

Due service of the above citation by copy is admitted this — day of June, A. D. 1898.

H. W. CHILDS,
Attorney General of the State of Minn.

b [Endorsed:] Supreme Court of the United States. Fred Stearns, as county auditor of Aitkin county, Minnesota, appellant, *vs.* The State of Minnesota *ex rel.* J. N. Marr, respondent. Citation.

c UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the honorable supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in a suit between The State of Minnesota on relation of James N. Marr, plaintiff, and Fred Stearns, as county auditor of Aitkin county, Minnesota, defendant, wherein was drawn in question the validity of a statute of the State of Minnesota, on the ground of the said statute being repugnant to the Constitution and laws of the United States, and the decision was in favor of the validity of said statute, a manifest error hath happened, to the great damage of said Fred Stearns, as county auditor of Aitkin county, Minnesota, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with

all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

d Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 21st day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States,
District of Minnesota.

Allowed by—
CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

e [Endorsed:] State of Minnesota, in supreme court. State of Minnesota *ex rel.* J. N. Marr, resp't, *vs.* Fred Stearns, county auditor, app'l't. Writ of error.

f STATE OF MINNESOTA:

In Supreme Court.

THE STATE OF MINNESOTA on Relation of James N. Marr, Plaintiff and Respondent,
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minnesota, Defendant and Appellant.

Now comes the said defendant and appellant above named, whose full name is Fred Stearns, and alleges in the above-entitled cause this court in its decision has committed a manifest error against the said defendant, and thereupon the said defendant prays a writ of error to the Supreme Court of the United States in accordance with law.

And said defendant assigns the following errors in the aforesaid judgment of this court, namely:

1st. This court in and by the said judgment held that a certain law of the State of Minnesota, being chapter 168 of the General Laws of Minnesota of the Year 1895, was constitutional and valid.

2nd. The court in and by said judgment adjudged that said statute repealed and amended chapter 8 of the Special Laws of Minnesota for the Year 1865, and did not violate the obligation of a contract contrary to the Constitution of the United States.

3rd. The court in and by said judgment adjudged that said statute repealed and amended chapter sixty-five of the Special Laws of Minnesota of the Year 1870, and did not violate the obligation of a contract contrary to the Constitution of the United States.

g 4th. The court in and by said judgment adjudged that chapter 8 of the Special Laws of Minnesota of the Year 1865 is not a valid contract binding upon the State.

5th. The court in and by said judgment adjudged that chapter sixty-five of the Special Laws of Minnesota of the Year 1870 is not a contract binding upon the State.

6th. The court in and by said judgment adjudged that chapter 8 of the Special Laws of Minnesota of the Year 1865, ratified and validated by the amendment to the constitution of the State of Minnesota of the year 1871, is not a contract binding upon the State, and can be amended or repealed without violating the obligation of a contract.

7th. The court in and by said judgment adjudged that chapter 65 of the Special Laws of Minnesota of the Year 1870, ratified and validated by the amendment to the constitution of the State of Minnesota of the year 1871, is not a contract binding upon the State, and can be amended or repealed without violating the obligation of a contract.

Dated the 21st day of June, 1898.

FRED STEARNS,
By EMERSON HADLEY,
C W. BUNN AND
M. D. GROVER,
His Attorneys.

h [Endorsed:] State of Minnesota, supreme court. State of Minnesota *ex rel.* J. N. Marr, respondent, *vs.* Fred Stearns, as county auditor of Aitkin county, Minnesota, appellant. Assignment of errors.

i Know all men by these presents that we, Kenneth Clark and George H. Prince, are held and firmly bound unto the State of Minnesota in the full and just sum of two hundred and fifty dollars, to be paid to the said State of Minnesota or its attorneys or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, in the supreme court of the State of Minnesota, in a suit pending in said court between The State of Minnesota on relation of James N. Marr, plaintiff, and Fred Stearns, as county auditor of the county of Aitkin and State of Minnesota, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to said State of Minnesota, citing and admonishing it to be and appear at the Supreme Court of the United States, at Washington, on or before the twentieth day of July, A. D. 1898:

Now, the condition of the above obligation is such that if the

said Fred Stearns, as county auditor of the county of Aitkin and State of Minnesota, shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

j KENNETH CLARK. [SEAL.]
GEORGE H. PRINCE. [SEAL.]

Sealed and delivered in the presence of—
GEO. C. POWER.
H. W. PARKER.

Approved by—
CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

k [Endorsed:] State of Minnesota, supreme court. State of Minnesota *ex rel.* J. N. Marr, respondent, *vs.* Fred N. Stearns, county auditor, appellant. Undertaking on appeal.

1 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Petition for Writ.

STATE OF MINNESOTA, }
County of Aitkin, } *ss:*

James N. Marr, being first duly sworn, deposes and says that he is a resident, citizen, freeholder and tax-payer of the county of Aitkin in the State of Minnesota. That he has been such resident, freeholder and tax-payer in said county for more than eight years last passed. That during all of said time this affiant has been and now is a large owner and holder of both real and personal property in said county and that all of said property has been during
2 all of said time and now is subject to taxation in said county, and that during all said time all of said property has been taxed in said county, and this affiant has, during all said time, paid taxes on all his said property. That the amount of said taxes that this affiant has been obliged to pay upon said property is a large sum of money, and the amount this affiant has paid during the current year amounts to the sum of more than $150.

Affiant further says that one Fred Stearns is now, and for more

than two years last passed has been the county auditor of said Aitkin county, duly elected, qualified and acting as such.

Affiant further says that the following-described real estate, to wit, the north half (½) of section thirty-five (35) and the northwest quarter (¼) of section seven (7), and the northwest quarter (¼) of the southwest quarter (¼) of section fourteen (14), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-one (21), all in town forty-seven (47), range twenty-seven (27), in Aitkin county, State of Minnesota, is now subject to taxation in said county and should be upon the tax-rolls of said county for the year 1897.

Affiant further says that said real estate is not now and never has been upon the tax-list of said county of Aitkin, and that the same is not now and never has been taxed in said county, and does not now, and never has borne its just proportion or any proportion of the expenses of the government of said Aitkin county, or
3 the school district, or any other political division of government in which the same is located. That no part of said property is now exempt from taxation.

That on the third day of August, 1897, this affiant caused to be served upon said Fred Stearns, auditor of said Aitkin county, Minnesota, a demand in writing, signed by this affiant, setting forth the fact that this affiant is a resident, citizen, freeholder and tax-payer in said Aitkin county, and describing said real estate and stating that the same was subject to taxation in said county, and that said property was and is untaxed, and demanding of said county auditor that he place said lands on the tax-list of said Aitkin county, and that a just proportion of the taxes of said Aitkin county be extended against said property and collected as other taxes in said county, a copy of which said demand is hereto attached, marked "Exhibit A" and made a part of this affidavit. That said Fred Stearns, as such county auditor, then and there refused and still does refuse to comply with such demand, and then and there refused and now does refuse to place said lands upon the tax-list of said Aitkin county for the purpose of extending said tax against them, or for any other purpose.

Affiant further says that said county auditor has not since the service of said demand placed said lands, or any portion thereof, on the tax-list of said Aitkin county, and has not extended the just proportion or any portion of the taxes of said Aitkin county against said property, and has not collected or caused to be collected
4 any portion of said taxes, but absolutely refuses to take any action regarding said lands in any manner whatever.

Affiant further says that said lands above described and not taxed as aforesaid are of large value, amounting in the aggregate, as this affiant verily believes, to the sum of $5,000, or more.

Affiant further says, that by reason of the facts, that said lands have not been placed upon the tax-list of said Aitkin county, and are not now thereon, and do not bear their just proportion of the expenses of supporting the government of said county and other political divisions in which they are located, this affiant and other

tax-payers of said county have been greatly damaged thereby, in this: That the amount of taxes that this affiant and other tax-payers in said county are obliged to pay on their property in said county is greatly increased and enlarged and enhanced.

Affiant further says that if the said lands which are not taxed were, as they ought to be, taxed and brought to bear their just proportion of such taxes, that the amount of taxes necessary to be levied upon other property in said county would be greatly lessened and decreased.

And further saith not this affiant except that this affidavit is made for the purpose of applying to the court for an alternative writ of mandamus, to be issued out of the district court, in and for the county of Aitkin, directed to Fred Stearns, as such county auditor of Aitkin county, Minnesota, and commanding him as such auditor to place said lands on the tax-list of said Aitkin
5 county, and to extend against said lands the just proportion of the taxes of said county and other political divisions in which the same are located, and to cause said taxes to be collected in the manner required by law, or that he show cause before this court why he should not do so.

Wherefore, this affiant prays for said writ to issue, and for such other and further relief as he may be entitled to in the premises.

JAMES N. MARR.

Subscribed and sworn to before me this fourth day of August, 1897.

[SEAL.] GEORGE T. WILLIAMS,
Notary Public, Aitkin Co., Minn.

STATE OF MINNESOTA, } ss:
County of Aitkin, }

Demand.

You will please take notice, that the undersigned is a resident, citizen, freeholder and tax-payer in the county of Aitkin, in the State of Minnesota. That he has been such for more than eight years last past, and at the date of this notice he owns real and personal property in said county subject to taxation, and the amount of taxes paid by him upon said property for the current year exceeds the sum of $150.

You will further please take notice, that the following-described real estate, to wit: the north half (½) of section thirty-five (35), and the northwest quarter (¼) of section seven (7), and the northwest quarter (¼) of the southwest quarter (¼) of section fourteen
6 (14), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-one (21), all in town forty-seven (47), range twenty-seven (27) in Aitkin county, State of Minnesota, is not, and never has been, taxed in said county, and that the value of said property is a large sum exceeding, in the aggregate, as the undersigned verily believes, the sum of $5,000, and that all of said property is subject to taxation in said county, and that said prop-

erty has not been placed upon the tax-list of said county for the current year.

That by reason of the fact that this property is not upon the tax-list of said county, and taxes are not paid thereon the undersigned, and other tax-payers of said county, are greatly damaged thereby for the reason that the amount of taxes assessed upon other property in said county to support its government, is greatly increased, and for this reason the undersigned, in his own behalf, and on behalf of other tax-payers in said county, hereby demands that said property, and all thereof, be forthwith placed upon the tax-list of said county, and that the just proportion of taxes be extended against said property and collected as other taxes in said county.

(Signed) JAMES N. MARR.

Dated August 2, 1897.

To Fred. Stearns, county auditor, Aitkin county, Aitkin, Minn.

7 STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs. }
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Order.

On reading and filing the affidavit of James N. Marr, and on motion of Hon. H. W. Childs, the attorney general of the State of Minnesota, and Messrs. Choate and Merrill, as attorneys for said petitioner, it is

Ordered, that an alternative writ of mandamus be allowed, and that the same do issue out of and under the seal of this court; that the same may be made, by the clerk of this court, returnable on the sixth day of September, 1897, at my chambers, in the First National Bank building, in the city of Brainerd, in the county of Crow Wing, at 3 o'clock in the afternoon on said day, and that the manner of service of said writ shall be by delivering a copy thereof to said Fred Stearns, the county auditor of said Aitkin county, personally, and showing him the original thereof; such service to be made on or before the sixteenth day of August, 1897, and that there
8 shall be also served with said writ a copy of the affidavit upon which it is allowed, and a copy of this order of allowance.

Dated August 6, 1897.

G. W. HOLLAND,
District Judge.

STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs. }
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Writ of Mandamus.

The State of Minnesota to the above-named respondent:

Whereas, it manifestly appears to us, from the affidavit of the above petitioner, James N. Marr, that he is now, and for more than eight years last past has been, a resident, citizen, freeholder and tax-payer in the county of Aitkin, in this State, and that during all of said time he has been and now is a large owner and holder of both real and personal property in said county, and that during all of said time all of said property has been and now is taxed in said county of Aitkin, and that said affiant has paid a large amount of taxes in said Aitkin county on said property;

9 That one Fred Stearns is now, and for more than two years last past has been, the county auditor of said Aitkin county, duly elected, qualified and acting as such;

That the following-described real estate, to wit, the north half (½) of section thirty-five (35), and the northwest quarter (¼) of section seven (7), and the northwest quarter (¼) of the southwest quarter (¼) of section fourteen (14), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-one (21), all in town forty-seven (47), range twenty-seven (27), in Aitkin county and State of Minnesota, is now subject to taxation in said county;

That said real estate is not now, and never has been, upon the tax rolls of said Aitkin county, and the same is not now, and never has been, taxed in said county, and it does not now, and never has, borne its just proportion or any proportion of the expenses of the government of said county of Aitkin, or the school district, or any other political division of government in which the same is located, notwithstanding the fact that said property, or any portion thereof, is not now exempt from taxation;

That on the third day of August, 1897, the said petitioner, James N. Marr, did cause to be served upon the said Fred Stearns, said county auditor of said Aitkin county, a demand in writing, signed by said James N. Marr, and setting forth the fact that the said James N. Marr is a resident, citizen, freeholder and tax-payer in said Aitkin county, and describing said real estate and stating

10 that the same was subject to taxation in said county, and that said property was and is untaxed, and demanding of said county auditor that he place said lands on the tax-list of said Aitkin county, and that a just proportion of the taxes of said Aitkin county be extended against said property and be collected as other taxes in said county, as required by law;

That said Fred Stearns, as such county auditor, then and there refused, and still does refuse, to comply with said demand;

That said Fred Stearns, said county auditor, has not, since the service of said demand, placed said lands, or any portion thereof, on the tax-list of said Aitkin county, and has not extended the just proportion, or any proportion, of the taxes of said county against said property, and has not collected or caused to be collected any portion of said taxes, but absolutely refuses to take any action regarding said lands in any manner whatever;

That said lands above described and not taxed as aforesaid are of large value, amounting in the aggregate to more than $5,000;

That by reason of the fact that said lands have not been placed upon the tax-list of said Aitkin county and are not now thereon, and do not bear their just proportion of the expenses of supporting the government of said county and other political divisions in which they are located, the said James N. Marr, and other taxpayers of said county have been greatly damaged thereby in this: that the amount of taxes that the said James N. Marr and other taxpayers in said county are obliged to pay on their property in said county is greatly increased, enlarged and enhanced;

11 That if the said lands which are not taxed were made to bear their just proportion of such taxes that the amount of taxes to be levied upon other property in said county would be greatly lessened and decreased;

And it appearing that the said James N. Marr has no plain, speedy and accurate remedy at law against the said Fred Stearns, said county auditor, for his neglect and omission to place said lands on the tax-list of said Aitkin county, and it further appearing that the said James N. Marr has made application to this court for an alternative writ of mandamus, to be directed to you, commanding that you, the said Fred Stearns, county auditor of said county, do forthwith place said lands on the tax-list of said Aitkin county and to extend against said lands the just proportion of the taxes of said county and other political divisions in which the same are located, and to cause said taxes to be collected in the manner required by law, or that you do show cause before this court why you should not do so.

Now therefore, we do hereby command you, the said Fred Stearns, county auditor of said Aitkin county, in the State of Minnesota, that you do immediately after the receipt of this writ, place upon the tax-list of said county of Aitkin, in the State of Minnesota, the property hereinbefore described, and that you do extend against said property the just proportion of the taxes of said county and other political divisions in which the same are located, and that you do cause the same to be collected in the manner required of you by

12 law, or that you show cause before this court, at my chambers, in the First National Bank building, in the city of Brainerd, in the county of Crow Wing, and State of Minnesota, on Monday the sixth day of September, 1897, at 3 o'clock in the afternoon, why you have not done so.

Witness the Hon. George W. Holland, judge of said district court aforesaid, in said county of Aitkin, this ninth day of August, 1897.

[Seal of the District Court.]

FRANK F. SEAVEY,
Clerk of the District Court in and for County of Aitkin.

STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Answer.

First.

Answering the alternative writ of mandamus herein, defendant admits that the relator is now, and for more than eight years last past has been, a resident, citizen, freeholder and tax-payer in the county of Aitkin, this State, as alleged. That defendant is
13 now, and for more than two years last past has been, county auditor of said county. The real estate described in the alternative writ is located in said county.

On August 3, 1897, the relator served upon defendant, as county auditor, a demand in writing as alleged, and defendant refused to comply with said demand.

Second.

I.

Defendant alleges that the north half (N. ½) of section thirty-five (35), township forty-seven (47), range twenty-seven (27), described in the alternative writ of mandamus herein, is, and for several years last past has been, the property of the Saint Paul and Duluth Railroad Company.

That the Saint Paul and Duluth Railroad Company is and has been since June, 1877, a corporation duly created by, and duly existing under the laws of the Territory and State of Minnesota, and especially by and under an act of the legislature of the Territory of Minnesota, entitled, "A bill for an act entitled An act to incorporate the Nebraska and Lake Superior Railroad Company," approved May 23, 1857; and an act of the legislature of the State of Minnesota, entitled, "An act to amend an act entitled 'An act to incorporate the Nebraska & Lake Superior Railroad Company,'" approved March 8, 1861; and an act of the legislature of the State of Minnesota, entitled, "An act to extend the time for the grading and completion of the Lake Superior and Mississippi railroad," approved March 6, 1863,
14 and an act of the legislature of the State of Minnesota, entitled, "An act to execute the trust created by an act of Con-

gress, entitled, 'An act making a grant of lands to the State of Minnesota, to aid in the construction of the railroad from St. Paul to Lake Superior,' approved May 5, 1864, and to grant the said lands to the Lake Superior and Mississippi Railroad Company to aid in the construction of its railroad, and to amend and continue certain acts in relation to said railroad company," approved February 23, 1865; and an act of the legislature of the State of Minnesota, entitled, "An act in relation to the deposit of $20,000, by the Lake Superior and Mississippi Railroad Company, provided for in chapter 2 of the Special Laws of 1865, and to amend said special act," approved February 26, 1866; and an act of the legislature of the State of Minnesota, entitled "An act extending the time for the completion of the Lake Superior and Mississippi railroad," approved March 5, 1867; and an act of the legislature of the State of Minnesota, entitled, "An act relating to the Lake Superior and Mississippi Railroad Company," approved March 5, 1870; and an act of the legislature of the State of Minnesota, approved March 6, 1876, and entitled, "An act to amend title 1, of chapter 34, of the General Statutes relating to corporations," this last-mentioned act appearing also in part, as section 87, of chapter 34, of title 1, of the General Statutes of Minnesota, of 1878; that said above-mentioned act, approved May 23, 1857, was duly accepted by the persons therein named, and the Nebraska and Lake Superior Railroad Company, and such
15 acceptance of said act was duly filed in the office of the secretary of state of Minnesota, on September 12, 1857; that said above-mentioned act, approved March 8, 1861, was duly accepted by the persons therein named and by the Nebraska and Lake Superior Railroad Company, and by the Lake Superior and Mississippi Railroad Company, and such acceptance of said act was duly filed in the office of the secretary of state of Minnesota, on April 13, 1861; that said above-mentioned act, approved March 6, 1863, was duly accepted by the Lake Superior and Mississippi Railroad Company, and such acceptance thereof was duly filed in the office of secretary of state of Minnesota on March 7, 1863; that said above-mentioned act approved February 23, 1865, was duly accepted by the Lake Superior and Mississippi Railroad Company and such acceptance thereof was duly filed in the office of the secretary of state of Minnesota, on February 25, 1865; and that each and all of the foregoing acts of the Territory and State are hereby referred to for greater certainty, and are made a part hereof.

II.

That pursuant to and in accordance with authority so to do, conferred upon it by the aforesaid several acts of the legislature of the Territory and State of Minnesota, the Lake Superior and Mississippi Railroad Company, a corporation duly created by and existing under the several acts, except that approved March 6, 1876, referred to in the preceding paragraph, did, on or about January 1, 1869, make, execute and deliver a certain mortgage
16 and trust deed to J. Edgar Thompson and William G. Moorhead, as trustees thereunder, wherein and whereby said Lake

Superior and Mississippi Railroad Company conveyed and mortgaged to said trustees all the line of said road of said company and all of its franchises (including its franchise to be a corporation), and all property of every kind and description, whether already acquired, to be acquired or thereafter obtained, for the purpose of securing certain bonds of said company, amounting in the aggregate to $4,500,000, which bonds said Lake Superior and Mississippi Railroad Company, for a valuable consideration, made, issued and negotiated at the same time, and by which it covenanted and agreed with the several holders of said bonds to pay the principal of said bonds to their holders at the time in them named, and, further, to pay interest on the principal of said bonds to their holders, semi-annually, at the rate of seven (7) per cent. per annum, on the first day of January and July of each year; that in and by said bonds said Lake Superior and Mississippi Railroad Company also covenanted and agreed, among other things, that if at any time said company should be in default in the payment of any interest upon any of said bonds, and said default should continue sixty (60) days after the maturity and demand of payment of said interest, that thereupon the principal of such bonds should become due and payable forthwith; and said Lake Superior and Mississippi Railroad Company further covenanted and agreed, by said bonds and mortgage and trust deed with the holders of said bonds and the trustees in
17 said mortgage and trust deed, that in case of any default of said company, in paying, either any part of the principal of any of said bonds or of the interest thereon, as by said bonds required, and at the times in them named for such payment, then the trustees under said mortgage and trust deed might and should have the right to forthwith foreclose said mortgage and trust deed; that after the making, as aforesaid, of said bonds and mortgage and trust deed, George Philler and Stephen A. Caldwell were duly, and in accordance with the terms and requirements of said bonds and trust deed and mortgage, and as permitted thereby, substituted as trustees in the place and stead of said Thompson and Moorhead; that thereafter and on or before January 1, 1874, the Lake Superior and Mississippi Railroad Company failed and refused to pay the interest on any of said bonds, though payment of such interest has been duly demanded of said company by the holders of said bonds, and was then due, and on or before January 1, 1874, said Lake Superior and Mississippi Railroad Company became and was in default in the payment of the principal and interest of its said bonds; that upon said default in the payment of interest on said bonds, and after said default had continued more than sixty (60) days from the maturity and demand of payment of said interest, the holders of said bonds elected, as by said bonds and trust deed and mortgage they were in such case expressly permitted to do, to declare and they did declare, on or before January 1, 1875, the principal of all said bonds forthwith due and payable; that thereafter and while
18 said Lake Superior and Mississippi Railroad Company was in default in the payment of both the principal and interest of its said bonds, and after it had so been in default over six months,

the said Philler and Caldwell, trustees under said mortgage and trust deed, the conditions of said bonds and trust deed and mortgage having become broken and foreclosure of said trust deed and mortgage being then authorized according to its terms, began a suit in equity against said Lake Superior and Mississippi Railroad Company and others, in the circuit court of the United States, in and for the district of Minnesota, to foreclose said trust deed and mortgage; that said circuit court duly obtained and had jurisdiction of said action and of said company and of all the parties to said suit; that in said suit such proceedings were duly had thereafter that on or about March 8, 1877, said circuit court, by its decree then duly rendered, ordered, adjudged and decreed that said trust deed and mortgage were a valid and existing lien, prior and superior to any other lien or right whatever, upon all the corporate and other franchises and immunities of said corporation and its rights and privileges as such, and all its property, including its franchise to be a corporation. And that there was then due and unpaid upon said bonds and mortgage and trust deed, the sum of $5,771,260.55, secured by such first lien, and further ordered adjudged and decreed that unless the whole of said sum were paid by said Lake Superior and Mississippi Railroad Company, to the said trustees, within thirty (30) days from the said rendition of said decree, then all of said property, franchises, rights,
19 and immunities, should be sold at public auction, by or under the direction of H. E. Mann, Esq., a master of said circuit court, in one parcel, and as an entire property, to the highest and best bidder therefor, and that the right and equity of redemption of said Lake Superior and Mississippi Railroad Company, and of all others, should be absolutely foreclosed and barred by such sale, in pursuance of said order, and that said sale of all said property should be absolute and without any right of redemption whatever, by any one; that upon payment of the sum bid at such sale by the highest and best bidder, and confirmation of said sale by said circuit court, the said master should execute and deliver a deed, in accordance with said decree, to the purchaser thereof; that thereafter, the said Lake Superior and Mississippi Railroad Company, having neither paid, nor caused to be paid, to said trustees, as or when permitted by said decree, or at any time, any part of the sum by it found and adjudged to be due and payable as aforesaid, and the said thirty (30) days from the entry and rendition of said decree having expired, such further proceedings were had in said suit, in said circuit court, that said H. E. Mann, Esq., master of said court in pursuance of and in full compliance with said decree, and according to the course and practice of said court, and after performing and attending to all the preliminaries and prerequisites required by said decree or practice, did, on May 1, 1877, sell, at public auction, and as one entire property, all the said franchises, rights, immunities and properties of said Lake Superior and Mississippi Railroad Company to William H. Rhawn,
20 Edwin M. Lewis, George Whitney, Nathan Hilles, Frederick R. Shelton, Edward A. Rollins and Fisher A. Baker, for the

sum of $500,000, that sum being the largest amount bid, and the said persons last named being the highest bidders for said franchises, rights, immunities and property; that said sale was authorized by said decree; that the said purchasers at said sale in all respects complied with the requirements and conditions of said decree and sale and their purchase, and fully performed everything of them in any way required, and that thereafter, the said sale and proceedings having been duly reported to said circuit court, that court on June 12, 1877, duly confirmed and approved said sale, ordered said master to make and deliver to said purchasers a deed of all said franchises, rights, immunities and property; that thereafter and on June 14, 1877, said master, in pursuance of and in all respects as authorized by and in accordance with said decree, sale and confirmation, made, executed and delivered to said purchasers and their heirs, successors and assigns a deed, in accordance with the terms of said decree, wherein and whereby there were granted and conveyed to said purchasers, to wit, William H. Rhawn, Edwin M. Lewis, George Whitney, Nathaniel Hilles, Frederick R. Shelton, Edward A. Rollins, and Fisher A. Baker, their heirs, personal representatives, successors, and assigns, all of said franchises, rights, immunities and property; that said deed was duly filed and recorded in the office of the secretary of state of Minnesota on or about June 14, 1877, and is hereby referred to for greater certainty as a part hereof; that by
21 said foreclosure and sale all of the franchises, rights, privileges, immunities and property of the Lake Superior and Mississippi Railroad Company were granted, transferred and conveyed to said purchasers at said sale, their successors and assigns, and that said purchase was made by said purchasers for the use and benefit of the said bondholders of said Lake Superior Railroad Company, and in view of and as permitted by and with the purpose of reorganization and incorporation under and pursuant to an act of the legislature of the State of Minnesota, approved March 6, 1876, and entitled, "An act to amend title 1 of chapter 34 of the General Statutes, relating to corporations;" that thereafter said purchasers and the persons for whose benefit said purchase had been made, as aforesaid, did on or about June 27, 1877, organize and associate themselves as a corporation under and pursuant to and in full compliance with said last-mentioned act, approved March 6, 1876, and were at said date last named duly created and have since duly existed as a corporation under and pursuant to said last-mentioned act, under and by the name of the "Saint Paul and Duluth Railroad Company;" that all the steps required to be taken and things required to be done for incorporation under said act of March 6, 1876, were duly taken and done at the times, in the manner and by the persons by said act specified; that on June 27, 1877, the said purchasers met at St. Paul, Minn., said date being within thirty (30) days of the delivery of the deed to them from said master of the United States circuit court as aforesaid, after notice of the time and exact place
22 of such meeting had been published by said purchasers for at least ten days prior to time of said meeting in some of the

daily newspapers of St. Paul, and at said meeting said purchasers adopted the corporate name of "The St. Paul & Duluth Railroad Company" for the proposed new organization and elected a board, of nine directors of said corporation, and said board thereupon elected a president, secretary, treasurer, and such other officers as said Lake Superior and Mississippi Railroad Company had had and been authorized to elect, and adopted a corporate seal for said St. Paul & Duluth Railroad Company; that thereafter and on or about June 27, 1877, said St. Paul & Duluth Railroad Company made and certified under its corporate seal, attested by its president and secretary, a statement, showing the date of its organization, the corporate name of it adopted, the amount of its capital stock, issued and unissued, common and preferred, the name of its president, secretary, treasurer and other general officers, the number and names of its directors, chosen, as aforesaid at said meeting, and did on said June 27, 1877, cause said statement and said conveyance of said master to said purchasers to be recorded in the office of the secretary of state of Minnesota; that said statement, or record as aforesaid, is hereby referred to for greater certainty as a part hereof; that thereafter, and on or about July 17, 1877, said purchasers, at the foreclosure sale aforesaid, for a valuable consideration, made, executed and delivered to the St. Paul & Duluth Railroad Company, a deed and conveyance wherein and whereby they then granted
23 and conveyed to said last-named company, its successors and assigns, all of the corporate and other franchises, and all the rights, privileges, immunities and property, which they acquired under said master's deed and decree.

III.

That by an act of Congress approved May 5, 1864, and entitled "An act making a grant of lands to the State of Minnesota to aid in the construction of the railroad from St. Paul to Lake Superior," the United States granted to the State of Minnesota for the purposes of aiding in the building of a line of railroad from the city of St. Paul to the head of Lake Superior, being the road authorized to be constructed by and referred to in the said several acts of the Territory and State of Minnesota hereinbefore referred to, every alternate section of public land of the United States designated by odd numbers to the amount of five alternate sections per mile on each side of the said railroad on the line thereof within the State of Minnesota, with the right, in case any lands were lost from the grant before the definite location of the line of road, to select indemnity lands therefor from the lands of the United States nearest to the lines of sections granted as aforesaid, in alternate sections or parts thereof, within twenty (20) miles of said line of road; that said act of Congress approved May 5, 1864, is hereby referred to and made a part hereof; that thereafter by an act of Congress approved July 13, 1866, and entitled "An act to amend an act making a grant of land to the State of Minnesota to aid in the construction of the railroad from St. Paul
24 to Lake Superior approved May 5, 1864," it was provided and enacted that in case it should appear when the line of the

Lake Superior and Mississippi railroad had been definitely located, that the quantity of land intended to be granted by the said act approved May 5, 1864, in aid of the construction of said road should be deficient by reason of the line thereof running near the boundary line of the State of Minnesota, the said company should be entitled to take from other public lands of the United States, within thirty (30) miles of the west line of said road, such an amount of lands as should make up such deficiency, provided, only, that such lands so taken should be in alternate odd-numbered sections; that this act of Congress, approved July 13, 1866, is referred to hereby and made a part hereof; that — the act of the legislature of the State of Minnesota approved February 23, 1865, and hereinbefore referred to in a preceding subparagraph hereof numbered 1, and made a part hereof, the State of Minnesota accepted the said acts of Congress and the grants of land thereby made, and further, by said last-mentioned act of the legislature of the State of Minnesota, said grants of Congress and the lands thereby granted, were, by said State of Minnesota, granted and transferred to and vested in the Lake Superior Railroad Company, its successors and assigns, to aid in the construction of its line of road; that by said act of the legislature of the State of Minnesota, approved March 8, 1861, and hereinbefore referred to, the State of Minnesota granted to the Lake Superior and Mississippi Railroad Company in aid of the con-
25 struction of its line of road, all the swamp lands for seven (7) miles on either side of said line of road, with the further right, that if it should be found that any portion of said swamp lands had been sold or otherwise disposed of within the said seven (7) miles, the amount of said swamp lands granted to said company should be made up of other swamp lands belonging to the said State of Minnesota outside of said seven (7) miles; and with the right, further, that if it should be found that within said seven (7) miles on each side of said company's line of road, there should not be an amount of swamp lands belonging to the State of Minnesota, to at least seven (7) full sections per mile, then the said company should have the right to select from the swamp lands belonging to the State of Minnesota outside of said line and between the Mississippi river, Lake Superior and Rainy lake, other lands in an amount in all equal to seven (7) full sections for each and every mile of said road; that said last-mentioned act of the legislature of the State of Minnesota was duly accepted by said Lake Superior and Mississippi Railroad Company and its said acceptance thereof was duly filed in the office of the secretary of state of Minnesota on April 13, 1861; that afterward by the act of the legislature of the State of Minnesota approved March 6, 1863, and referred to in paragraph 1 hereof and made a part hereof, said swamp-land grant by the State of Minnesota to the said Lake Superior and Mississippi Railroad Company was amended as shown by the provisions of said last-mentioned act; and that said last-mentioned act was duly accepted by said Lake
26 Superior and Mississippi Railroad Company, and its acceptance thereof was duly filed in the office of the secretary of state of Minnesota on March 7, 1863; that the line of road of Lake Superior

and Mississippi Railroad Company authorized by and referred to in the said several acts of the legislature of the Territory and of the State of Minnesota, hereinbefore referred to, and referred to in the said several acts of Congress hereinb-fore referred to, and in aid of which the grants of land were made, as aforesaid, by the United States and the State of Minnesota, was surveyed, located, constructed and completed long prior to the commencement of this proceeding, and within the time and in the manner specified and required by the said several acts of the Territory and State of Minnesota and of Congress, and that the said Lake Superior and Mississippi Railroad Company, and the St. Paul and Duluth Railroad Company, as its successor, in all respects complied with and conformed to the several acts of Congress and of the Territory and State of Minnesota, hereinbefore referred to, and so complied with and conformed to said several acts within the times by said acts allowed therefor, and that said Lake Superior and Mississippi Railroad Company and its successor, the St. Paul and Duluth Railroad Company, in all respects and in proper season complied with and conformed to the provisions, conditions and requirements of the several acts of Congress and of the State of Minnesota granting lands to aid in the building of the said line of road of said Lake Superior and Mississippi Railroad Company, and that by the survey, location, construction and com-

27 pletion of the said line of road, as aforesaid, said Lake Superior and Mississippi Railroad Company and the St. Paul and Duluth Railroad Company became entitled to the lands granted by the said acts of Congress and of the State of Minnesota, hereinbefore referred to, for the purpose of aiding in the building of said line of road; that under and in pursuance of the acts of Congress hereinbefore referred to, and of an act of Congress approved March 3, 1865, and entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," and of an act of Congress, approved July 13, 1866, and entitled "An act relating to lands granted to the State of Minnesota to aid in constructing railroads," and of the acts of Congress granting swamp lands to the State of Minnesota, the United States duly granted, certified and conveyed to the State of Minnesota, several tracts of land in the county of Aitkin, Minnesota; that the said tract of land hereinbefore particularly described, and one of the parcels described in the alternative writ of mandamus herein, to wit, the north one-half (N. ½) of section thirty-five (35), of town forty-seven (47), range twenty-seven (27), in Aitkin county, Minnesota, is one of the said parcels of lands conveyed to the State of Minnesota by the United States pursuant to the acts of Congress granting swamp lands to said State and thereafter, and on the eighteenth day of August, 1883, said State of Minnesota duly granted and conveyed said tract of land to the St. Paul and Duluth Railroad Company, as the successor of the Lake Superior and Mississippi Railroad Company,

28 pursuant to said acts above referred to, and the said St. Paul and Duluth Railroad Company has ever since said time held and owned, and now holds and owns, said tract of land in fee-simple absolute and as part and parcel of the grants of land made to the

Lake Superior and Mississippi Railroad Company and to the St. Paul and Duluth Railroad Company, its successor, as aforesaid, by the several acts of Congress and the Territory and State of Minnesota hereinbefore referred to, to aid in the construction of the line of road of the Lake Superior and Mississippi Railroad Company and the St. Paul and Duluth Railroad Company, its successor as aforesaid.

IV.

That by an act of the legislature of the State of Minnesota, approved March 3, 1865, and entitled, "An act in relation to the taxation of lands granted to the Lake Superior and Mississippi Railroad Company," it was enacted and provided among other things that said company should annually pay to the State of Minnesota a certain tax amounting to a percentage stated in said act upon the gross earnings of said railroad, and that the payment of said per centum annually as required by said act should be in full of all taxation and assessment whatever; and that whenever any lands theretofore or thereafter granted to the Lake Superior and Mississippi Railroad Company, to aid in the construction or the completion of its road or branches should be contracted to be sold, conveyed or leased by said company, the same should be placed upon the tax-list by the proper officer for taxation as other real
29 estate for the year succeeding that in which such contract for a sale, conveyance or lease thereof should have been made, and that in enforcing the collection of taxes thereon, the title and interest of said company and of any trustee or mortgagee thereof should be in nowise impaired or affected thereby, but that the improvements thereon and all the interest of the purchaser or lessee therein might and should in case of default of the payment of taxes upon said land be sold to satisfy such taxes, and that the provisions of the several acts therefore enacted in relation to the taxation of the lands of said company should be and they were thereby repealed so far as they conflicted with the provisions of the last-mentioned act. That on March 20, 1865, the said Lake Superior and Mississippi Railroad Company, duly accepted said last-mentioned act of the State of Minnesota, approved March 3, 1865, and that on the same twentieth day of March, such acceptance of said act was duly filed in the office of the secretary of state of Minnesota, which act is referred to and made a part hereof. That thereafter, the said railroad was built and constructed by the Lake Superior and Mississippi Railroad Company in reliance upon said act.

That both the Lake Superior and Mississippi Railroad Company and the St. Paul & Duluth Railroad Company, have annually paid to the State of Minnesota and as required and within the time specified by the said act approved March 3, 1865, the proper gross-earnings tax fixed by said act.

30 V.

That neither the Lake Superior and Mississippi Railroad Company nor its successor, the St. Paul & Duluth Railroad Company

ever has sold, or conveyed, any of the said land, the north half of section thirty-five, except as said land was sold, transferred and conveyed as aforesaid from the former to the latter company, and that neither the Lake Superior and Mississippi Railroad Company nor the St. Paul & Duluth Railroad Company has ever leased or contracted to sell, convey or lease any of said land. Said land is in Aitkin county, Minnesota, is not on the assessment-roll or tax-list, and has never been and is not taxed except and unless through taxation on the gross earnings of the railroad, provided by law. The St. Paul & Duluth Railroad Company owns the same and it is not sold or contracted to be sold, and the said company has owned the same for over five years. The said land is not used or necessary to be used in connection with the operation of the railroad but the preferred stock of the St. Paul & Duluth Railroad Company, amounting approximately, to about $5,000,000, is payable and redeemable out of the proceeds of the land grant, and the land grant has been used solely and exclusively for the purpose of raising funds with which to construct, equip, maintain and operate said railroad.

VI.

That said act of the State of Minnesota approved March 8, 1865, and the acceptance of the same duly filed as aforesaid consti-
31 tute a contract that the lands granted by the United States and the State of Minnesota aforesaid should not, until contracted to be sold, conveyed or leased by said company, or its successor, be subject to ordinary taxation as other real estate, but that the payment of the percentage of the gross earnings of said railroad as therein provided should be in lieu of all other taxation, and any attempted repeal or modification of said contract without the consent of said railroad company, or the St. Paul and Duluth Railroad Company, its successor, violates the obligation of a contract contrary to the provisions of the Constitution of the United States and is void, and by reason of the foregoing, said last-described parcel of land is exempt from all taxation, except the payment of the gross-earnings tax by said railroad company and it is not the duty of this defendant to place the said parcel of land upon the tax roll or list of the said county of Aitkin for the current year.

Third.

Defendant further alleges that the piece or parcel of land described in the alternative writ of mandamus herein, to wit, the northwest quarter of section seven (7), of town forty-seven (47), range twenty-seven (27), in Aitkin county, Minnesota, is the property of the Northern Pacific Railroad Company; that the Northern Pacific Railroad Company is a corporation created by the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake
32 Superior to Puget sound, on the Pacific coast, by the northern route." It was authorized to construct its road and exercise its corporate franchises in the State of Minnesota by

an act of the legislature of the State of Minnesota, approved March 2, 1865, entitled "An act to aid in the construction of the Northern Pacific railroad and telegraph line from Lake Superior to Puget sound." That said act of Congress above referred to (section 3) granted ten alternate sections of public land on each side of the line through the State of Minnesota to aid in the construction of said road. That said piece of land above described, to wit, the said northwest quarter (N. W. ¼) of section seven (7), was granted, certified and conveyed by the United States to the Northern Pacific Railroad Company pursuant to said act of Congress above referred to, and the Northern Pacific Railroad Company now owns and holds the same, and for several years last past has owned and held the same, by title in fee-simple absolute, as a part of the lands granted to it as aforesaid. That the said Northern Pacific Railroad Company has never contracted to sell or leased or conveyed the same, or any part thereof.

That by an act of the legislature of the State of Minnesota, approved March 4, 1870, entitled "An act in relation to the taxation and to facilitate the construction of the Northern Pacific railroad," being chapter 65 of the Special Laws of Minnesota of the Year 1870, it was enacted and provided that the lands, franchises, property, stock and capital of the Northern Pacific Railroad Company shall be liable to assessment and taxation at the same rate and in the same manner, and not otherwise,
33 and shall be exempt from assessment and taxation to the same extent and upon the same terms and conditions as the lands, property and franchises of the Lake Superior and Mississippi Railroad Company, as provided in and by an act entitled "An act in relation to the taxation of lands granted to the Lake Superior and Mississippi Railroad Company," approved March 3, 1865, provided, however, that the gross earnings of said railroad company on which a percentage is to be paid to the State, shall include only the earnings of that portion of the Northern Pacific railroad constructed and operated by said company within the limits of the State of Minnesota, which act is hereby referred to and made a part hereof, as is also the said act approved March 3, 1865, entitled "An act in relation to the lands granted to the Lake Superior and Mississippi Railroad Company." That the Northern Pacific Railroad Company duly filed an acceptance of the terms and conditions of said act of March 4, 1870, and thereafter constructed its road through the State of Minnesota in reliance thereon. That the percentage of the gross earnings of said railroad provided to be paid in said act of March 4, 1870, and said act of March 3, 1865, has been duly paid to the treasurer of the State of Minnesota each year as provided for in said acts. That by reason of said act of March 4, 1870, said northwest quarter of section seven (7), town forty-seven (47), of range twenty-seven (27), is exempt from all ordinary taxation and assessment as other lands are taxed, and is not liable to taxation in any other manner save by the payment of the percentage on the gross earnings of said railroad as afore-
34 said. That it is not the duty of this defendant to place this land upon the tax-list of said county of Aitkin, in the State

of Minnesota, or to extend any taxes against said property for the current year. That said act of the State of Minnesota, approved March 4, 1870, and the acceptance of the same, duly filed as aforesaid, constitute a contract that the lands granted by the United States and the State of Minnesota to the Northern Pacific Railroad Company should not, until contracted to be sold, conveyed or leased by said company, or its successor, be subjected to the ordinary taxation as other real estate, but that the payment of the percentage of the gross earnings of said railroad as therein provided, should be in lieu of all other taxation, and any attempt to repeal or modification of said contract without the consent of said railroad company violates the obligation of said contract contrary to the provisions of the Constitution of the United States and is void.

Fourth.

Defendant alleges that the Minneapolis and St. Cloud Railroad Company, now, by change of name, the Great Northern Railway Company, is a railway corporation organized under the laws of this State, and operating a railroad therein. By act of the legislature of this State, approved February 11, 1865, lands were granted by the State to the Minneapolis and St. Cloud Railroad Company, to aid in the construction of its line of railway, and under said act and acts amendatory thereof and supplemental thereto, the northwest quarter of the southwest quarter, of section fourteen (14), township
35 twenty-seven (27), range forty-seven (47), was conveyed by the State to the Great Northern Railway Company as a parcel of the land granted to the Minneapolis and St. Cloud Railroad Company to aid in the construction of its line of railway.

Said parcel of land is exempt from taxation except as provided in sections one and two, chapter 111, Special Laws of this State, for the year 1873.

The Great Northern Railway Company has not accepted said act but it has become subject to its provisions under an act entitled "An act for the taxation of railroad companies," approved March 7, 1887.

Three (3) per cent. of the gross earnings of the line of railway operated by the Great Northern Railway Company, and of the lines constructed and operated under its charter, has been paid each year to the State, at the time and in the manner provided in said act, by reason whereof it was not the duty of this defendant to place the said parcel of land upon the tax roll or list of said county of Aitkin for the current year.

Fifth.

The laws under which the property described in the alternative writ is exempt from assessment and taxation, as hereinbefore alleged, are still in force, unless such laws have been amended or repealed by the provisions of chapter 168 of the Laws of 1895, entitled "An act relating to the taxation of certain lands owned by railroad com-

panies in this State, and repealing laws and parts of laws
36 relating to the taxation of the same, and to provide for the submission of this act to the people of this State for their approval or rejection."

Sixth.

Defendant alleges that said chapter has not become a law.

(*a.*) At the general election in November, 1894, Hon. Knute Nelson was elected governor of this State. He qualified and entered upon the discharge of the duties of his office.

Hon. D. M. Clough was elected lieutenant governor of this State. He duly qualified and entered upon the discharge of the duties of his office, and became *ex officio* president of the senate of this State.

There were at the general election of the State in November, 1894, duly elected fifty-four senators for a term of four years from January, 1895, and all of said senators duly qualified and entered upon their duties as senators, and said senate was organized with fifty-four members on January 8, 1895. That Frank A. Day was the senator elected from the sixth senatorial district of this State at said election for said term of four years, and on said eighth day of January he duly qualified and entered upon the discharge of his duties as said senator. That on the twenty-fifth day of January, A. D. 1895, said Frank A. Day was duly elected president *pro tempore* of said senate, and continued to hold that office up to January 31, 1895.

On the thirty-first day of January, 1895, Hon. Knute Nelson, who was then governor of this State, having theretofore been
37 elected United States Senator for the State, resigned the office of governor. On the same day, Hon. D. M. Clough, who was at that time lieutenant governor, and *ex officio* president of the State senate, resigned his office as lieutenant governor, and qualified and became governor of the State.

On the same day, and after the resignation of Hon. D. M. Clough as lieutenant governor, said Frank A. Day, as president *pro tempore* of the senate of Minnesota, became lieutenant governor and *ex officio* president of the senate. He qualified as such, and entered upon the duties of such office, and continued to perform such duties until his successor was elected and qualified.

The office of senator from the sixth senatorial district of this State became vacant on the thirty-first day of January, 1895 and was not filled until the general election in November, 1896. At such election Hon. H. H. Dunn was elected senator from said sixth senatorial district of the State. He duly qualified as such, and became a member of the senate.

(*b.*) During the session of the legislature of the State commencing in January, 1895, being the twenty-ninth session of such legislature, there was introduced into the house of representatives, one of the branches of said legislature, a bill for an act entitled "An act relating to the taxation of certain lands owned by railroad companies in this State, and repealing laws and parts of laws relating to the taxation of the same, and to provide for the submission of this act to the

people of this State for their approval or rejection," of which
38 chapter 168 of the Laws of 1895, hereinbefore referred to, is a copy. Such bill was declared passed by the house of representatives, and was by such house transmitted to the senate on the ninth day of February, 1895, and it appears upon the journal of the senate, and it is true, that the said bill was received in the senate, referred to a committee, reported back to the senate and put upon its final passage on the thirteenth day of March, 1895, and that the roll of the senate and its yeas and nays being called upon the final passage of the bill, there were twenty-eight votes in its favor, and no more; and that among those voting yea, or in favor of the passage of the bill, was the lieutenant governor and president of the senate, Frank A. Day; and that, excluding the vote of the said Frank A. Day, there were only twenty-seven senators voting yea, or in favor of the passage of the bill, and twenty-seven is not a majority of all the members elected to the senate, and that said bill was never passed by said senate except as above stated. Said bill was thereafter signed by said Frank A. Day, as president of the senate, and transmitted to the governor, and it received his approval on the nineteenth day of March, 1895.

(c.) At the general State election held in November, 1896, a ballot was prepared by the secretary of state and used by the electors of the State. A copy of this ballot is hereto attached and made a part of this answer, and marked "Exhibit A."

House file number one, being chapter 168 of the Laws of
39 1895, was not attached to said ballot, or referred to in said ballot in terms or by reference to title or otherwise. Neither was the substance of said house file or bill indicated at the bottom of the ballot. Said house file or chapter was not submitted to a vote of the people of the State, and it was not adopted and ratified by a majority of the electors of the State at the election held in November, 1896.

Seventh.

None of the county canvassing boards of the State of Minnesota appointed to canvass the returns of the general election of November, 1896, in said State, did make, prepare or certify a statement and deposit the same in the office of the county auditor of their respective counties of the total number of ballots cast in each election district in their respective counties at the general election held on November 3, 1896, and none of the county auditors made and certified a copy of any such statement containing the whole number of ballots cast in each election district in their said counties at said election, under his official seal or otherwise, and forwarded the same to the secretary of state at St. Paul, Ramsey county, Minnesota, either by mail or in any other manner, and no report or statement or return of canvass was sent to the secretary of state or the State canvassing board of the whole number of votes cast at said election; and the said State canvassing board that canvassed the returns of the general election of November, 1896, did not have before them any return

or statement of the total number of votes cast at said election. No report was made to the State canvassing board of the whole number of votes cast at the said election, nor of the whole number of voters voting at said election. The State canvassing board did not canvass the whole number of votes cast, nor the whole number of voters voting, at said election. Such canvassing board did not report or certify as to the whole number of votes cast, nor the whole number of voters voting, at said election, and said canvassing board has not reported or certified that said house file 1, or chapter 168, received a majority of all the votes cast by the electors of the State at said election.

Wherefore defendant prays that the alternative writ of mandamus herein be discharged, and that the defendant be permitted to go hereof without day, and for such other and further relief as may be proper.

HADLEY & ARMSTRONG.

41 EXHIBIT A.

Put a cross-mark (X) opposite the name of each candidate you wish to vote for in the squares indicated by the arrow.

Presidential Electors.

Vote for nine.

Presidential elector—T. B. Walker—Republican—McKinley.	
Presidential elector—E. G. Holmes—Republican—McKinley.	
Presidential elector—Burdette Thayer—Republican—McKinley.	
Presidential elector—Charles H. Budd—Republican—McKinley.	
Presidential elector—James Quirk—Republican—McKinley.	
Presidential elector—Valora D. Eddy—Republican—McKinley.	
Presidential elector—C. A. Smith—Republican—McKinley.	
Presidential elector—Warren Potter—Republican—McKinley.	
Presidential elector—M. R. Brown—Republican—McKinley.	
Presidential elector—Wilson Borst—Democrat—Bryan. People's—	
Presidential elector—Chas. d'Autremont—Democrat—Bryan. People's—	
Presidential elector—John H. Ives—Democrat—Bryan. People's—	
Presidential elector—Harlow H. Bonniwell—Democrat—Bryan. People's—	
Presidential elector—John Day Smith—Democrat—Bryan. People's—	
Presidential elector—Sylvester Kelliher—People's—Bryan. Democrat—	
Presidential elector—T. J. Meighen—People's—Bryan. Democrat—	
Presidential elector—Hans B. Bjorge—People's—Bryan. Democrat—	
Presidential elector—James Dillon—People's—Democrat—Bryan.	
Presidential elector—James P. Pinkham—Prohibition—Levering.	
Presidential elector—Ole Kron—Prohibition—Levering.	

42 Presidential elector—Benjamin W. How—National—Palmer. Democrat—	
Presidential elector—John Von Rohr—National—Palmer. Democrat—	
Presidential elector—Anton Schaefer—National—Palmer. Democrat—	
Presidential elector—T. N. Simmons—National Democrat—Palmer.	
Presidential elector—Ernest Schrader—National—Palmer. Democrat—	
Presidential elector—A. Ueland—National Democrat—Palmer.	
Presidential elector—Wilson G. Crosby—National—Palmer. Democrat—	
Presidential elector—Lyman B. Everdell—National—Palmer. Democrat—	
Presidential elector—Edwin E. Fisher—Socialist—Matchett. Labor—	
State Ballot.	
Governor—David M. Clough—Republican.	
Governor—John Lind—Democrat—People's.	
Governor—Wm. J. Dean—Prohibition.	
Governor—Albert A. Ames—Independent.	
Governor—Wm. B. Hammond—Socialist—Labor.	
Governor—	
Lieutenant governor—John L. Gibbs—Republican.	
Lieutenant governor—J. M. Bowler—People's—Democrat.	
Lieutenant governor—Clarence Wedge—Prohibition.	
Lieutenant governor—	
Secretary of state—Albert Berg—Republican.	
Secretary of state—Julius J. Heinrich—Democrat—People's.	
Secretary of state—J. A. McConkey—Prohibition.	
Secretary of state—	

Vote for nine.

Vote for one.

Vote for one.

Vote for one.

Vote for one. Vote for one.

43 State treasurer—August T. Koerner—Republican.	
State treasurer—Alexander McKinnon—Democrat—People's.	
State treasurer—	
Attorney general—Henry W. Childs—Republican.	
Attorney general—John A. Keys—People's—Democrat.	
Attorney general—	
For taxation of railroad lands. YES. NO.	
For the act appropriating the income from internal improvement land fund to the internal improvement or road and bridge fund. YES. NO.	
Shall there be a constitutional convention? YES. NO.	
Amendment to section four (4) of article five (5) of the constitution of the State of Minnesota, defining the authority and duties of the governor in relation to pardons, and creating a board of pardons. YES. NO.	
Amendment to section one (1) of article seven (7) of the constitution of the State of Minnesota, which relates to elective franchises. YES. NO.	
Amendment to article four (4) of the constitution, allowing cities and villages in this State to frame their own city charters. YES. NO.	
Amendment to section thirteen (13) of article one (1) of the constitution, relating to the taking or damaging private property for public use. YES. NO.	
Amendment of article eight (8) of the constitution, providing for loaning the permanent school and university fund to cities, villages, towns, counties, and school districts. YES. NO.	
Constitutional amendment providing for the taxation of sleeping car and other companies and owners, etc. YES. NO.	

44 STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs. }
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Findings.

This case came on to be heard before the court in vacation by consent of parties and was submitted to the court for its determination on the twenty-fourth and twenty-fifth days of September, A. D. 1897, upon the evidence, H. W. Childs and A. Y. Merrill, Esqs., appearing for the relator, and M. D. Grover, Moses E. Clapp and Emerson Hadley, Esqs., appearing for the defendant.

Now after due consideration of the allegations and proofs of the respective parties and the court being duly advised in the premises, the court finds the following facts:

I.

That the defendant, Fred Stearns, on the third day of August, A. D. 1897, and for more than two years last past has been the county auditor of the county of Aitkin, in said State.

That the relator, James N. Marr, is now and for more than eight years last past has been a resident, citizen, freeholder and tax-payer in the said county.

45 That the lands described in the alternative writ of mandamus in said action are all and several thereof situate in the county of Aitkin.

II.

That the north half of section 35, township 47, range 27, of the said lands is now and for several years last past has been the property of the St. Paul and Duluth Railroad Company.

That the St. Paul and Duluth Railroad Company is now and has been since June, 1877, a corporation duly created by, and duly existing under, the laws of the Territory and State of Minnesota, and especially by and under an act of the legislature of the Territory of Minnesota, entitled, "A bill for an act entitled An act to incorporate the Nebraska and Lake Superior Railroad Company," approved May 23, 1857; and an act of the legislature of the State of Minnesota, entitled "An act to amend an act entitled 'An act to incorporate the Nebraska and Lake Superior Railroad Company,'" approved March 8, 1861; and an act of the legislature of the State of Minnesota, entitled, "An act to extend the time for the grading and completion of the Lake Superior and Mississippi railroad," approved March 6, 1863, and an act of the legislature of the State of Minnesota entitled, "An act to execute the trust created by an act of Congress, entitled, 'An act making a grant of lands to the

State of Minnesota, to aid in the construction of the railroad from St. Paul to Lake Superior,' approved May 5, 1864, and to grant the said lands to the Lake Superior and Mississippi
46 Railroad Company to aid in the construction of its railroad and to amend and continue certain acts in relation to said railroad company," approved February 23, 1865; and an act of the legislature of the State of Minnesota, entitled, "An act in relation to the deposit of $20,000 by the Lake Superior and Mississippi Railroad Company, provided for in chapter 2 of the Special Laws of 1865, and to amend said special act," approved February 26, 1868; and an act of the legislature of the State of Minnesota, entitled, "An act extending the time for the completion of the Lake Superior and Mississippi railroad," approved March 9, 1867; and an act of the legislature of the State of Minnesota entitled "An act relating to the Lake Superior and Mississippi Railroad Company," approved March 5, 1870; and an act of the legislature of the State of Minnesota, approved March 6, 1876, and entitled "An act to amend title 1 of chapter 34 of the General Statutes relating to corporations," this last-mentioned act appearing also, in part, as section 87, of chapter 34 of title 1, of the General Statutes of Minnesota of 1878; that said above mentioned act, approved May 23, 1857, was duly accepted by the persons therein named, and the Nebraska and Lake Superior Railroad Company, and such acceptance of said act was duly filed in the office of the secretary of state of Minnesota on September 12, 1857; that said above-mentioned act, approved March 8, 1861, was duly accepted by the persons therein named and by the Nebraska and Lake Superior Railroad Company, and by the Lake Superior and Mississippi Railroad Company, and such acceptance of said act was duly filed in the office of the secretary of state
47 of Minnesota on April 13, 1861; that said above-mentioned act, approved March 6, 1863, was duly accepted by the Lake Superior and Mississippi Railroad Company, and such acceptance thereof was duly filed in the office of the secretary of state of Minnesota on March 7, 1863; that said above-mentioned act approved February 23, 1865, was duly accepted by the Lake Superior and Mississippi Railroad Company, and such acceptance thereof was duly filed in the office of the secretary of state of Minnesota on February 25, 1865; and that each and all of the foregoing acts of the Territory and State are hereby referred to for greater certainty, and are made a part hereof.

That pursuant to, and in accordance with, authority so to do, conferred upon it by the aforesaid several acts of the legislature of the Territory and State of Minnesota, the Lake Superior and Mississippi Railroad Company, a corporation duly created by and existing under the several acts, except that approved March 6, 1876, referred to in the preceding paragraph, did, on or about January 1, 1869, make, execute and deliver a certain mortgage and trust deed to J. Edgar Thompson and William G. Moorhead, as trustees thereunder, wherein and whereby said Lake Superior and Mississippi Railroad Company conveyed and mortgaged to said trustees, all the line of said road of said company and all of its franchises (including its franchise

to be a corporation) and all property of every kind and description, whether already acquired, to be acquired or thereafter obtained, for the purpose of securing certain bonds of said company, amounting in the aggregate to $4,500,000, which bonds said Lake
48 Superior and Mississippi Railroad Company, for a valuable consideration, made, issued and negotiated at the same time and by which it covenanted and agreed with the several holders of said bonds to pay the principal of said bonds to their holders, at a time in them named, and further to pay interest on the principal of said bonds, to their holders, semi-annually at the rate of seven (7) per cent. per annum, on the first day of January and July of each year; that in and by said bonds, said Lake Superior and Mississippi Railroad Company, also covenanted and agreed among other things, that if at any time said company should be in default in the payment of any interest upon any of said bonds, and said default should continue sixty (60) days after the maturity and demand of payment of said interest, that thereupon the principal of such bonds should become due and payable forthwith; and said Lake Superior and Mississippi Railroad Company further covenanted and agreed, by said bonds and mortgage and trust deed with the holders of said bonds and the trustees in said mortgage and trust deed, that in case of any default of said company, in paying, either any part of the principal of any of said bonds or of the interest thereon, as by said bonds required, and at the times in them named for such payment, then the trustees under said mortgage and trust deed might and should have the right to forthwith foreclose said mortgage and trust deed; that after the making, as aforesaid, of said bonds and mortgage and trust deed, George Philler and Stephen A. Caldwell were duly, and in accordance with the terms and requirements of said bonds and
49 trust deed and mortgage, and as permitted thereby, substituted as trustees in the place and stead of said Thompson and Moorhead; that thereafter and on or before January 1, 1874, the Lake Superior and Mississippi Railroad Company failed and refused to pay the interest on any of said bonds, though payment of such interest had been duly demanded of said company by the holders of said bonds, and was then due, and on or before January 1, 1874, said Lake Superior and Mississippi Railroad Company became and was in default in the payment of the principal and interest of its said bonds; that upon said default in the payment of interest on said bonds, and after said default had continued more than sixty days from the maturity and demand of payment of said interest, the holders of said bonds elected, as by said bonds and trust deed and mortgage they were in such case expressly permitted to do, to declare and they did declare, on or before January 1, 1875, the principal of all said bonds forthwith due and payable; that thereafter and while said Lake Superior and Mississippi Railroad Company was in default in the payment of both the principal and interest of its said bonds, and after it had so been in default over six months, the said Philler and Caldwell, trustees under said mortgage and trust deed, the conditions of said bonds and trust deed and mort-

gage having become broken and foreclosure of said trust deed and mortgage being then authorized according to its terms, began a suit in equity against said Lake Superior and Mississippi Railroad Company and others, in the circuit court of
50 the United States, in and for the district of Minnesota, to foreclose said trust deed and mortgage; that said circuit court duly obtained and had jurisdiction of said action and of said company and of all the parties to said suit; that in said suit such proceedings were duly had thereafter; that on or about March 8, 1877, said circuit court, by its decree then duly rendered, ordered, adjudged and decreed that said trust deed and mortgage were a valid and existing lien, prior and superior to any other lien or right whatever, upon all the corporate and other franchises and immunities of said corporation and its rights and privileges as such, and all its property, including its franchises to be a corporation. And that there was then due and unpaid upon said bonds and mortgage and trust deed, the sum of $5,771,260.55, secured by such first lien, and further ordered, adjudged and decreed that unless the whole of said sum were paid by said Lake Superior and Mississippi Railroad Company, to the said trustees, within thirty (30) days from the said rendition of said decree, then all of said property, franchises, rights and immunities, should be sold at public auction by or under the direction of H. E. Mann, Esq., a master of said circuit court, in one parcel, and as an entire property, to the highest and best bidder therefor, and that the right and equity of redemption of said Lake Superior and Mississippi Railroad Company, and of all others, should be absolutely foreclosed and barred by such sale, in pursuance of said order, and that said sale of all said property should be absolute and without any right of redemption whatever, by any one; that upon payment of the sum bid at such sale by the highest and best bidder and confirma-
51 tion of said sale by said circuit court, the said master should execute and deliver a deed, in accordance with said decree, to the purchaser thereof; that thereafter the said Lake Superior and Mississippi Railroad Company, having neither paid, nor caused to be paid, to said trustees, as or when permitted by said decree or at any time, any part of the sum by it found and adjudged to be due and payable as aforesaid, and the said thirty (30) days from the entry and rendition of said decree, having expired, and further proceedings were had in said suit, in said circuit court, that said H. E. Mann, Esq., master of said court, in pursuance of and in full compliance with said decree, and according to the course and practice of said court, and after performing and attending to all the preliminaries and prerequisites required by said decree or practice, did, on May 1, 1877, sell at public auction, and as one entire property, all the said franchises, rights, immunities and properties of said Lake Superior and Mississippi Railroad Company, to William H. Rhawn, Edwin M. Lewis, George Whitney, Nathan Hilles, Frederick R. Shelton, Edward A. Rollins and Fisher A. Baker, for the sum of $500,000, that sum being the largest amount bid, and the said persons last named being the highest bidders for said fran-

chises, rights, immunities and property; that said sale was authorized by said decree; that the said purchasers at said sale, in all respects complied with the requirements and conditions of said decree and sale and their purchase, and fully performed everything of them in any way required, and that thereafter, the said sale and proceedings
52 having been duly reported to said circuit court, that court, on June 12, 1877, duly confirmed and approved said sale, ordered said master to make and deliver to said purchasers a deed of all said franchises, rights, immunities and property; that thereafter and on June 14, 1877, said master, in pursuance of and in all respects as authorized by and in accordance with said decree, sale and confirmation, made, executed and delivered to said purchasers and their heirs, successors and assigns, a deed, in accordance with the terms of said decree, wherein and whereby there were granted and conveyed to said purchasers, to wit: William H. Rhawn, Edwin M. Lewis, George Whitney, Nathaniel Hilles, Frederick R. Shelton, Edward A. Rollins and Fisher A. Baker, their heirs, personal representatives, successors and assigns, all of said franchises, rights, immunities and property; that said deed was duly filed and recorded in the office of the secretary of state of Minnesota on or about June 14, 1877, and is hereby referred to for greater certainty, as a part hereof; that by said foreclosure and sale, all of the franchises, rights, privileges, immunities and property of the Lake Superior and Mississippi Railroad Company were granted, transferred and conveyed to said purchasers, at said sale, their successors and assigns, and that said purchase was made by said purchasers for the use and benefit of the said bondholders of said Lake Superior Railroad Company, and in view of and as permitted by and with the purpose of reorganization and incorporation under and pursuant to an act of the legislature of the State of Minnesota, approved
53 March 6, 1876, and entitled, "An act to amend title 1, of chapter 34, of the General Statutes relating to corporations." That thereafter said purchasers and the persons for whose benefit said purchase has been made, as aforesaid, did, on or about June 27, 1877, organize and associate themselves as a corporation under and pursuant to and in full compliance with said last-mentioned act, approved March 6, 1876, and were at said date last named duly created, and have since duly existed as a corporation, under and pursuant to said last-mentioned act, under and by the name of the "Saint Paul and Duluth Railroad Company;" that all the steps required to be taken and things required to be done for incorporation under said act of March 6, 1876, were duly taken and done at the times, in the manner and by the persons by said act specified; that on June 27, 1877, the said purchasers met at St. Paul, Minnesota, said date being within thirty (30) days of the delivery of the deed to them from said master of the United States circuit court, as aforesaid, after notice of the time and exact place of such meeting had been published by said purchasers for at least ten days prior to the time of said meeting in some of the daily newspapers of St. Paul, and at said meeting said purchasers adopted the corporate name of "The St. Paul & Duluth Railroad Company" for the pro-

posed new organization, and elected a board of nine directors for said corporation, and said board thereupon elected a president, secretary, treasurer and such other officers as said Lake Superior and Mississippi Railroad Company had had and been authorized to elect,
54 and adopted a corporate seal for said St. Paul & Duluth Railroad Company; that thereafter, and on or about June 27, 1877, said St. Paul and Duluth Railroad Company made and certified, under its corporate seal, attested by its president and secretary, a statement showing the date of its said organization, the corporate name of it adopted, the amount of its capital stock, issued and unissued, common and preferred; the name of its president, secretary, treasurer and other general officers; the number and names of its directors chosen, as aforesaid, at said meeting; and did on said June 27, 1877, cause said statement and said conveyance of said master to said purchasers to be recorded in the office of the secretary of state of Minnesota; that said statement, or record as aforesaid, is hereby referred to for greater certainty as a part hereof; that thereafter, and on or about July 17, 1877, said purchasers, at the foreclosure sale aforesaid, for a valuable consideration, made, executed and delivered to the St. Paul and Duluth Railroad Company, a deed and conveyance wherein and whereby they then granted and conveyed to said last-named company, its successors and assigns, all of the corporate and other franchises, and all the rights, privileges, immunities and property, which they acquired under said master's deed and decree.

That by an act of Congress approved May 5, 1864, and entitled, "An act making a grant of lands to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior," the United States granted to the State of Minnesota, for the
55 purpose of aiding in the building of a line of railroad from the city of St. Paul to the head of Lake Superior, being the road authorized to be constructed by and referred to in the said several acts of the Territory and State of Minnesota hereinbefore referred to, every alternate section of public land of the United States designated by odd numbers to the amount of five alternate sections per mile on each side of the said railroad on the line thereof within the State of Minnesota, with the right, in case any lands were lost from the grant before the definite location of the line of road, to select indemnity lands therefor from the lands of the United States nearest to the line of sections granted as aforesaid, in alternate sections or parts thereof, within twenty (20) miles of said line of road; that said act of Congress approved May 5, 1864, is hereby referred to and made a part hereof; that thereafter by an act of Congress approved July 13, 1866, and entitled, "An act to amend an act making a grant of land to the State of Minnesota to aid in the construction of the railroad from St. Paul to Lake Superior, approved May 5, 1864," it was provided and enacted that in case it should appear when the line of the Lake Superior and Mississippi railroad had been definitely located that the quantity of land intended to be granted by the said act approved May 5, 1864, in aid of the construction of said road should be deficient by reason of the

line thereof running near the boundary line of the State of Minnesota, the said company should be entitled to take from other public lands of the United States within thirty (30) miles of the west line of
56 said road such an amount of lands as should make up such deficiency, provided only, that such lands so taken should be in alternate odd-numbered sections; that — the act of the legislature of the State of Minnesota approved February 23, 1865, and hereinbefore referred to in a preceding paragraph, the State of Minnesota accepted the said acts of Congress and the grants of land thereby made; and, further, by said last-mentioned act of the legislature of the State of Minnesota, said grants of Congress and the lands thereby granted, were, by said State of Minnesota, granted and transferred to and vested in the Lake Superior and Mississippi Railroad Company, its successors and assigns, to aid in the construction of its line of road; that by said acts of the legislature of the State of Minnesota approved March 8, 1861, and hereinbefore referred to, the State of Minnesota granted to the Lake Superior and Mississippi Railroad Company in aid of the construction of its line of road, all the swamp lands for seven (7) miles on either side of said line of road, with the further right that if it should be found that any portion of said swamp lands had been sold or otherwise disposed of within the said seven (7) miles, the amount of said swamp lands granted to said company should be made up of other swamp lands belonging to said State of Minnesota outside of said seven (7) miles; and with the right, further, that if it should be found that within said seven (7) miles on each side of said company's line of road, there should not be an amount of swamp lands belonging to the State of Minnesota, to at least seven (7) full sections per mile, then the said company should have the right to select from the swamp lands
57 belonging to the State of Minnesota outside of said line and between the Mississippi river, Lake Superior and Rainy lake, other lands in an amount in all equal to seven (7) full sections for each and every mile of said road; that said last-mentioned act of the legislature of the State of Minnesota, was duly accepted by said Lake Superior and Mississippi Railroad Company and its said acceptance thereof was duly filed in the office of the secretary of state of Minnesota on April 13, 1861; that afterward by the act of the legislature of the State of Minnesota, approved March 6, 1863, hereinbefore referred to, said swamp-land grant by the State of Minnesota to the said Lake Superior and Mississippi Railroad Company was amended as shown by the provisions of said last-mentioned act; and that said last-mentioned act was duly accepted by said Lake Superior and Mississippi Railroad Company, and its acceptance thereof was duly filed in the office of the secretary of state of Minnesota on March 7, 1863; that the line of road of Lake Superior and Mississippi Railroad Company authorized by and referred to in the said several acts of the legislature of the Territory and of the State of Minnesota, hereinbefore referred to, and referred to in the said several acts of Congress hereinbefore referred to, and in aid of which the grants of lands were made as aforesaid by the United States and the State of Minnesota, was surveyed, located, constructed

and completed, long prior to the commencement of this action and within the time and in the manner specified and required by the said several acts of the Territory and State of Minnesota and of
58 Congress, and that the said Lake Superior and Mississippi Railroad Company and the St. Paul and Duluth Railroad Company, as its successor, in all respects complied with and conformed to the several acts of Congress and of the Territory and State of Minnesota hereinbefore referred to, and so complied with and conformed to said several acts within the times by said acts allowed therefor, and that said Lake Superior and Mississippi Railroad Company and its successor, the St. Paul and Duluth Railroad Company, in all respects and in proper season complied with and conformed to the provisions, conditions and requirements of the several acts of Congress and of the State of Minnesota granting lands to aid in the building of the said line of road of said Lake Superior and Mississippi Railroad Company, and that by the survey, location, construction and completion of the said line of road as aforesaid, said Lake Superior and Mississippi Railroad Company and the said St. Paul and Duluth Railroad Company, became entitled to the lands granted by the said acts of Congress and of the State of Minnesota hereinbefore referred to for the purpose of aiding in the building of said line of road; that under and in pursuance of the acts of Congress hereinbefore referred to and of an act of Congress approved March 3, 1865, and entitled, "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," and of an act of Congress approved July 13, 1866, and entitled "An act relating to lands granted to the State of Minnesota to aid in constructing railroads," and of the acts of Con-
59 gress granting swamp lands to the State of Minnesota, the United States duly granted, certified and conveyed to the State of Minnesota several tracts of land in the county of Aitkin, Minnesota; that the said tract of land hereinbefore particularly described, and one of the parcels described in the alternative writ of mandamus herein, to wit, the north half of section 35, of town 47, range 27, in Aitkin county, Minnesota, is one of the said parcels of lands conveyed to the State of Minnesota by the United States pursuant to the acts of Congress granting swamp lands to said State; and thereafter, on the eighteenth day of August, 1883, said State of Minnesota duly granted and conveyed said tract of land to the St. Paul and Duluth Railroad Company, as the successor of the Lake Superior and Mississippi Railroad Company, pursuant to said acts above referred to, and the said St. Paul and Duluth Railroad Company has ever since said time held and owned, and now holds and owns, said tract of land made to the Lake Superior and Mississippi Railroad Company, and to the St. Paul and Duluth Railroad Company, its successor, as aforesaid, by the several acts of Congress and the Territory and State of Minnesota, hereinbefore referred to, to aid in the construction of the line of road of the Lake Superior and Mississippi Railroad Company, and the St. Paul and Duluth Railroad Company, its successor, as aforesaid.

That both the Lake Superior and Mississippi Railroad Company and the St. Paul and Duluth Railroad Company have annually paid to the State of Minnesota, and as required and within
60 the time specified by an act of the legislature and the State of Minnesota, approved March 3, 1865, and entitled "An act in relation to the taxation of lands granted to the Lake Superior and Mississippi Railroad Company," the proper gross-earnings tax fixed by said act.

That neither the Lake Superior and Mississippi Railroad Company nor its successor the St. Paul and Duluth Railroad Company, ever has sold or conveyed any portion of the lands hereinbefore particularly referred to as the north half of section 35, township 47, range 27, except as said land was sold, transferred and conveyed as aforesaid from the former to the latter company, and that neither the Lake Superior and Mississippi Railroad Company nor the St. Paul and Duluth Railroad Company has ever leased or contracted to sell, convey or lease any of said land; that said land is in Aitkin county, Minnesota, is not on the assessment-roll or tax-list and has never been, and is not taxed except and unless through taxation on the gross earnings of the railroad as provided by law; that the St. Paul and Duluth Railroad Company owns the same, and that it is not sold or contracted to be sold, and that the said company has owned the same for over five years; that the said land is not used or necessary to be used in connection with the operation of the railroad, but that the preferred stock of the St. Paul and Duluth Railroad Company, amounting approximately to about $5,000,000, is payable and redeemable out of the proceeds of the land grant and the land grant has been used solely and exclusively for the
61 purpose of raising funds with which to construct, equip, maintain and operate said railroad.

III.

That the piece or parcel of land described in the alternative writ of mandamus in said action, to wit, the northwest quarter of section 7, of town 47, range 27, in Aitkin county, Minnesota, is the property of the Northern Pacific Railroad Company; that the Northern Pacific Railroad Company is a corporation created by the act of Congress approved July 2, 1864, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound on the Pacific coast by the northern route;" that it was authorized to construct its road and exercise its corporate franchises in the State of Minnesota by an act of the legislature of the State of Minnesota, approved March 2, 1865, entitled "An act to aid in the construction of the Northern Pacific railroad and telegraph lines from Lake Superior to Puget sound;" that said act of Congress above referred to (section 3) granted ten alternate sections of public land on each side of the line through the State of Minnesota to aid in the construction of said road; that said piece of land above described, to wit, the said northwest quarter of section seven, was granted, certified and conveyed by the United States to the

Northern Pacific Railroad Company pursuant to said act of Congress above referred to, and the Northern Pacific Railroad Company now owns and holds the same, and for several years last past has owned and held the same, by title in fee-simple absolute as a part of
62 the lands granted to it as aforesaid; that the said Northern Pacific Railroad Company has never contracted to sell, or leased or conveyed the same, or any part thereof.

That the percentage of the gross earnings of said railroad provided to be paid by an act of the legislature of the State of Minnesota, approved March 4, 1870, and entitled "An act in relation to the taxation and to facilitate the construction of the Northern Pacific railroad," being chapter 65 of the Special Laws of Minnesota of the Year 1870, has been duly paid to the treasurer of the State of Minnesota each year, as provided for in said act.

IV.

That the Minneapolis and St. Cloud Railroad Company, now by change of name, the Great Northern Railway Company, is now a railway corporation, organized under the laws of this State and operating a railroad therein. That by an act of the legislature of the State, approved February 11, 1865, lands were granted by said State to the Minneapolis & St. Cloud Railroad Company to aid in the construction of its line of railway, and under said act and acts amendatory thereof and supplemental thereto, northwest one-quarter of the southwest one-quarter of section 14, township 47, range 27, was conveyed by the State to the Great Northern Railway Company as a parcel of the lands granted to the Minneapolis & St. Cloud Railroad Company to aid in the construction of its line of railway; and that the said Great Northern Railway Company is now the owner thereof; that the said Great Northern Railway Company has not accepted chapter 111 of the Special Laws of Minnesota for the Year 1873.

63 That three per cent. of the gross earnings of the line of railway operated by the Great Northern Railway Company and of the line constructed and operated under its charter has been paid each year to the State, at the time and in the manner provided in the act of the legislature of said State, entitled "An act for the taxation of railroad companies," approved March 7, 1887.

V.

That no part of any of the lands described in the petition herein are held, used or occupied for right of way, gravel pits, side tracks, depots or for any buildings or structures which are necessarily used in the actual management and operation of any of said railroad companies.

VI.

That during the session of the legislature of the State commencing in January, 1895, being the twenty-ninth session of such legislature, there was introduced into the house of representatives, one of the branches of said legislature, a bill for an act entitled "An act

relating to the taxation of certain lands owned by railroad companies in this State, and repealing laws and parts of laws relating to the taxation of the same, and to provide for the submission of this act to the people of this State for their approval or rejection," of which said bill chapter 168 of the General Laws of 1895 of said State is a copy; that said bill was declared passed by the house of representatives and was by said house transmitted to the senate on the ninth day of February, 1895; that it
64 appears upon the journal of the senate and that it was received in the senate, referred to a committee and put upon its final passage the thirteenth day of March, 1895, and that the roll of the senate and its yeas and nays being called upon the final passage of the bill, there were twenty-eight votes in its favor and no more; and that among those voting yea, or in favor of the passage of the bill, was Frank A. Day; that said Day was an acting and a *de facto* senator on said last-named day of said session of the legislature, and that said bill was thereafter signed by said Frank A. Day as president of the senate and transmitted to the governor and that it received his approval on the nineteenth day of March, 1895.

VII.

That at the general State election held in November, 1896, in said State, a ballot was prepared by the secretary of state and used by the electors of the State, a copy whereof is attached to the defendant's answer and made a part thereof and marked Exhibit "A;" that said house file No. 1, being chapter 168 of the General Laws of 1895, was not attached to said ballot or referred to therein in terms or by reference to title or otherwise, save as indicated by the words printed thereon.

The court finds as conclusions of law that the relator is entitled to the relief prayed for, with costs.

Let judgment be entered accordingly.

By the court:

G. W. HOLLAND,
District Judge.

Dated October 29, 1897.

65 STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Judgment.

This action having duly come on to be heard at a special term of the above-named court, duly held at the city of Brainerd, on the twenty-fourth day of September, 1897, and having been duly tried

before the court, H. W. Childs, Esq., and A. Y. Merrill, Esq., appearing for the relator, and M. D. Grover, Esq., Moses E. Clapp, Esq., and Emerson Hadley, Esq., appearing for the respondent, and the court having heard and considered all the evidence adduced in said action, and the arguments of counsel, and did duly make and file its order and findings therein:

Now, therefore, on the motion of H. W. Childs, Esq., A. Y. Merrill, Esq., as attorneys for the relator, and by direction of the court in said order contained, it is adjudged that the alternative writ of mandamus heretofore issued herein be, and the same is hereby made, peremptory, and the said respondent is hereby adjudged and commanded to immediately do and perform all things as in
66 said alternative writ commanded and enjoined, and that he forthwith place upon the tax-list of the county of Aitkin, for taxation, the said tracts and parcels of land, and all thereof, referred to in said alternative writ.

It is further ordered, adjudged and decreed that a peremptory writ of mandamus do forthwith issue out of and under the seal of this court, directed to said respondent, and commanding him to immediately and forthwith do and perform all things commanded and enjoined in said alternative writ, and to place upon the tax-list of Aitkin county for taxation the said tracts and parcels of land, and all thereof, as referred to in said alternative writ.

By the court:

[SEAL.] FRANK E. SEAVEY, *Clerk.*

Dated December 16, 1897.

STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Settled Case.

The above-entitled action came duly on to be heard before
67 the court, in vacation, by consent of parties, and was submitted to the court for its determination on the twenty-fourth and twenty-fifth days of September, A. D. 1897, H. W. Childs and A. Y. Merrill, Esqs., appearing for the relator, and M. D. Grover, Moses E. Clapp and Emerson Hadley, Esqs., appearing for the defendant.

The following is a record of the proceedings had at said time upon the presentation of said matter to said court:

It was admitted by the parties that the journals of the legislature for the sessions of 1895 and 1897 might be referred to by either party as to any fact therein appearing, and that all recitals therein

contained touching the official conduct of Frank A. Day shall be treated as if pleaded by either party and in evidence.

That, pursuant to this stipulation, the defendant called the attention of the court to the following extracts from the journal of the senate of the twenty-ninth session, and they were received in evidence, to wit, on page 3 of said journal, as follows:

"First day.—St. Paul, Tuesday, January 8, 1895.—This day being designated by the statute for the assembling of the legislature of the State of Minnesota, the members of the senate assembled in the senate chamber of the capitol and were duly called to order by Lieut. Gov. D. M. Clough at 12 m.

Senator Day was appointed temporary secretary.

The secretary called the roll and the following-named senators answered to their names:

Messrs. Allen, Barr, Cole, Collester, Cronkhite, Culkin,
68 Currier, Day, Dunham, French, Fuller, Greer, Hanna, Hanson, Heneman, Hodge, Howard, Iltis, Jones, Johnson, A. G., Johnson, W. E., Keller, Knatvold, Larson, Lloyd, Masterman, Miller, Morgan, McArthur, McHale, Ozmun, Peterson, Potter, Pottgieser, Reishus, Ringdal, Roverud, Schaller, Sevatson, Sheehan, Smith, Spencer, Sperry, Stebbins, Stevens, Stockton, Sweningson, Theden, Thompson, Thorpe, Wing, Wyman, Yale, Young.

The senators-elect then came forward, presented their certificates of election, and subscribed to and took the oath of office.

The senate then proceeded to the election of officers."

On pages 58 and 59 of said journal, being the journal for the thirteenth day of the session, Friday, January 25, 1895, as follows:

"Mr. French moved—

That the senate proceed to elect a president *pro tem.*

Which motion prevailed.

Mr. Stevens nominated Mr. Frank A. Day.

Mr. Howard nominated Mr. Geo. T. Barr.

Mr. Stevens moved—

That the vote be taken by calling the roll, each senator voting *viva voce* as his name was called.

Which motion prevailed.

A call of the senate was then taken to ascertain how many were present.

The roll being called the following senators answered to their names:

Messrs. Allen, Barr, Collester, Cronkhite, Culkin, Currier, Day,
French, Fuller, Greer, Hanna, Hanson, Heneman, Hodge,
69 Howard, Iltis, Jones, Johnson, A. G., Johnson, W. E., Keller, Knatvold, Larson, Lloyd, Masterman, Miller, Morgan, McArthur, McHale, Ozmun, Peterson, Pottgieser, Reishus, Ringdahl, Roverud, Schaller, Sevatson, Sheehan Spencer, Sperry, Stebbins, Stevens, Sweningsen, Theden, Thompson, Thorpe, Wing, Wyman, Yale.

Messrs. Cole, Dunham, Smith, Stockton, and Young were absent.

And the roll being called on the election of a president *pro tem.*—

Those who voted for Mr. Barr were:

Messrs. Allen, Greer, Hanna, Howard, Johnson, W. E., Knatvold, Masterman, Peterson, Potter, Sperry, Theden, Wyman.

Those who voted for Mr. Day were:

Messrs. Collester, Cronkhite, Culkin, Currier, French, Fuller, Hanson, Heneman, Hodge, Iltis, Jones, Johnson, A. G., Keller, Larson, Lloyd, Miller, Morgan, McArthur, McHale, Ozmun, Pottgieser, Reichus, Ringdahl, Roverud, Schaller, Sevatson, Sheehan, Spencer, Stebbins, Stevens, Sweningsen, Thompson, Thorpe, Wing, Yale, Young.

Mr. Day voted for Mr. Stevens.

Mr. Barr was excused.

Mr. Barr received 12 votes.

Mr. Day received 36 votes.

Mr. Stevens received 1 vote.

Mr. Day, having received a majority of all the votes cast, was declared elected.

Mr. Barr moved—

That Mr. Day be declared unanimously elected.

Which motion prevailed.

70 On pages 80 and 81, of said journal, being the journal of the seventeenth day of the session, Thursday, January 31, 1895, as follows:

"The following communication was received from his excellency the governor:

ST. PAUL, MINN., *Jan.* 31, 1895.

Hon. D. M. Clough, lieutenant governor, State of Minnesota.

DEAR SIR: Having been elected United States Senator from this State for the term of six years, commencing March 4, 1895, I hereby resign the office of governor of said State, such resignation to take effect forthwith.

Yours truly, KNUTE NELSON, *Governor.*

STATE OF MINNESOTA, EXECUTIVE DEPARTMENT,
ST. PAUL, *January* 31, 1895.

To the legislature of the State of Minnesota.

GENTLEMEN: Having, on the twenty-third day of January, 1895, been duly elected by you, United States Senator for the term of six years, commencing March 4, 1895, I have this day resigned the office of governor of the State of Minnesota, and have placed my letter of resignation in the hands of Lieutenant Governor D. M. Clough.

Yours respectfully, KNUTE NELSON, *Governor.*

The retiring lieutenant governor then briefly addressed the senate, thanking the senators for past courtesies.

President of the senate, Mr. Day, was then called to the chair.

71 Mr. Yale offered the following resolution:

Resolved, That the senate take a recess for thirty minutes to allow the members of this body to welcome our new governor,

and bidding farewell to our retiring governor, whom this legislature has elected to the high office of United States Senator.

Which was adopted."

On page 89 of said journal, being the journal of the seventeenth day of the session, Thursday, January 31, 1895, as follows:

"Upon reassembling, the following communication was received from his excellency, the governor:

STATE OF MINNESOTA, EXECUTIVE DEPARTMENT,
ST. PAUL, *January* 31, 1895.

To the legislature of the State of Minnesota.

GENTLEMEN: Knute Nelson, having this day resigned the office of governor of this State, I have, in pursuance of the constitution, duly assumed the office of governor and duly qualified for said office.

Very respectfully, D. M. CLOUGH, *Governor.*

President Day announced his resignation from the committee on railroads in favor of Mr. Stockton, and from the committee on mines and mining in favor of Mr. Jones."

On page 390 of said journal, being the journal of the forty-sixth day of the session, Wednesday, March 13, 1895, as follows:

"H. F. No. 1. A bill for an act relating to the taxation of certain lands owned by certain railroad companies in this State, and
72 repealing laws and parts of laws relating to the taxation of the same, and to provide for the submission of this act to the people of this State for their approval or rejection—

Was read the third time and put upon its final passage.

The question being taken on the passage of the bill.

And the roll being called, there were yeas 28 and nays 22, as follows:

Those who voted in the affirmative were:

Messrs. Allen, Barr, Cole, Culkin, Day, Hanna, Hanson, Heneman, Hodge, Iltis, Jones, Johnson, A. G., Knatvold, Larson, Miller, Ozmun, Peterson, Reishus, Ringdal, Sevatson, Sheehan, Smith, Theden, Thompson, Thorpe, Wing, Wyman, Young.

Those who voted in the negative were:

Messrs. Collester, Currier, Dunham, French, Fuller, Greer, Howard, Johnson W. E., Lloyd, Masterman, Morgan, McArthur, McHale, Potter, Pottgieser, Roverud, Schaller, Spencer, Stebbins, Stevens, Stockton, Sweningsen.

So the bill passed and its title was agreed to.

Mr. McHale raised the point of order that—

H. F. No. 1 was not carried, inasmuch as the bill had but 28 votes, including that of the lieutenant governor, and that without his vote it had but 27 votes.

Mr. Allen moved to reconsider the vote by which house file No. 1 was passed.

The question being taken on the motion to reconsider,

And the roll being called, there were yeas 1 and nays 38, as follows:

Mr. Hale voted in the affirmative.

Those who voted in the negative were:

73 Messrs. Allen, Barr, Cole, Collester, Culkin, Currier, Day, French, Fuller, Hanna, Heneman, Hodge, Jones, Johnson A. G., Johnson W. E., Knatvold, Larson, Masterman, Miller, Morgan, McArthur, Ozmun, Peterson, Reishus, Ringdal, Sevatson, Sheehan, Smith, Spencer, Stevens, Sweningsen, Theden, Thompson, Thorpe, Wing, Wyman, Young.

So the motion was lost."

On pages 838 and 839 of said journal, being the journal of the seventy-ninth day of the session, April 23, 1895, as follows:

"The senate then proceeded to elect a president *pro tem.*

Mr. Morgan nominated Mr. George Barr.

Mr. Stevens seconded the nomination, and Mr. Barr was elected unanimously by a rising vote."

The relator further called attention of the court to the following extracts from the journal of the senate of the thirtieth session, and they were received in evidence, to wit:

On pages 3 and 4, being the journal of the first day of that session, January 5, 1897, as follows:

"This being the day designated by statute for the assembling of the legislature of the State of Minnesota, the members of the senate assembled in the senate chamber of the capitol and were duly called to order by Lieut. Gov. Gibbs at 12 m.

Mr. Potter was appointed temporary secretary.

Mr. Knatvold moved that we now proceed to organize under the statutes, and that the secretary call the roll of senators by

74 senatorial districts, when the following senators responded:

First district—E. K. Roverud.
Second district—R. E. Thompson.
Third district—Sam. Sweningsen.
Fourth district—T. V. Knatvold.
Fifth district—Geo. D. McArthur.
Sixth district—F. A. Day.
Seventh district—H. J. Miller.
Eighth district—E. Sevatson.
Ninth district—E. D. French.
Tenth district—Geo. T. Barr.
Eleventh district—Eugene B. Collester.
Twelfth district—W. A. Sperry.
Thirteenth district—Henry Currier.
Fourteenth district—A. T. Stebbins.
Fifteenth district—W. H. Yale.
Sixteenth district—E. S. Reishus.
Seventeenth district—John Peterson.
Eighteenth district—Charles J. Larsen.
Nineteenth district—J. W. Lloyd.
Twentieth district—A. W. Stockton.
Twenty-first district—O. J. Wing.

Twenty-second district—A. J. Greer.
Twenty-third district—W. C. Masterman.
Twenty-fourth district—Albert Schaller.
Twenty-fifth district—Timothy D. Sheehan.
Twenty-sixth district—Nicholas Pottgieser.
Twenty-seventh district—Edward H. Ozmun.
Twenty-eighth district—Hiram H. Stevens.
Twenty-ninth district—William E. Johnson.
Thirtieth district—James T. Wyman.
Thirty-first district—Edwin G. Potter.
Thirty-second district—Darius F. Morgan.
Thirty-third district—Gustave Theden.
75 Thirty-fourth district—Stephen B. Howard.
Thirty-fifth district—Dewitt C. Dunham.
Thirty-sixth district—Jas. McHale.
Thirty-seventh district—Fred Iltis.
Thirty-eighth district—Wm. E. Culkin.
Thirty-ninth district—Peter E. Hanson.
Fortieth district—H. J. Heneman.
Forty-first district—L. O. Thorpe.
Forty-second district—James Hanna.
Forty-third district—E. T. Young.
Forty-fourth district—F. A. Hodge.
Forty-fifth district—Henry Keller.
Forty-sixth district—W. M. Fuller.
Forty-seventh district—A. G. Johnson.
Forty-eighth district—A. B. Cole.
Forty-ninth district—E. J. Jones.
Fiftieth district—John H. Smith.
Fifty-first district—P. M. Ringdahl.
Fifty-second district—John Q. Cronkhite.
Fifty-fourth district—H. R. Spencer.
Mr. Hanson was excused.

When the sixth senatorial district was called, Mr. Day answered to his name, whereupon Mr. Dunn stepped forward and offered his credentials as senator from said district, and requested to be sworn in.

Mr. Yale objected, and moved that the credentials be referred to the committee on elections.

Which motion prevailed."

On pages 62, 63, 64, 65, 66, 67 and 68 of said journal, being the journal for the tenth day of said session, January 20, 1897, as follows:

Mr. Sperry, from the committee on elections, made the following report:

76 Your committee on elections, to whom was referred the question as to who is entitled to the seat of senator, at this session, from the sixth senatorial district, report as follows:

Counsel for the respective parties appeared before the committee, and there entered into a written stipulation of all the facts bearing

upon the right of the respective parties, which stipulation is hereto attached, marked "Exhibit A," and made a part of this report.

Your committee further report that counsel for the respective parties do not desire to argue the questions involved in this matter twice, and your committee believing it to be a matter of so great importance that every senator should have the fullest opportunity of informing himself as to the rights of the respective parties to this controversy.

They therefore submit the enclosed statement of facts as agreed upon by counsel, and make no report as to the law in said matter, and refer the whole matter back to the senate, and recommend that it be taken up and considered by the senate on Thursday, the twenty-first day of January, 1897, at 11 o'clock a. m., and that counsel for the respective parties be permitted to address the senate thereon.

W. A. SPERRY.
R. E. THOMPSON.
JOHN H. SMITH.
E. T. YOUNG.
WILLIAM H. YALE.

77 EXHIBIT "A."

The committee on elections of the senate met in session in the railroad committee room at 3 p. m., Friday afternoon, January 15, 1897.

Senator W. A. Sperry in the chair.

Hon. Robert Evans and A. Y. Merrill appearing for Frank A. Day, and Hon. Moses Clapp and Mr. Munn appearing for Mr. H. H. Dunn.

By Hon. W. A. SPERRY: I would suggest that the counsel make a statement as to what they expect to prove here this afternoon, so that the committee may have it.

By Mr. MUNN: Is there a copy of the proceedings of the first day of the session here?

Copy furnished by Mr. Evans.

Mr. MUNN: I will make a statement in regard to what we have agreed upon. Counsel have agreed upon many facts which are claimed to be material by the parties proposing them. Neither party admits the materiality of the facts as shown, but all objections as to the materiality or relevancy of the facts which either party may desire hereafter to take may be taken and urged or waived at any hearing of this question, either before this committee or before the committee of the senate as a whole.

Mr. Munn offers that portion of the Senate Journal of the Thirtieth Session, on page 2, being the first day thereof, and which reads as follows: "When the sixth senatorial district was called Mr. Day answered to his name, whereupon Mr. Dunn stepped forward and offered his credentials as senator from said district and requested to be sworn."

78 We also offer the certificate of H. H. Dunn, as senator-elect from the sixth senatorial district of this State. This certificate reads as follows:

"*Certificate of Election.*

STATE OF MINNESOTA, }
County of Martin. }

I, Edgar B. Shanks, county auditor of the county of Martin, and State of Minnesota, do hereby certify, that at a general election, held in said county and State, on the first Tuesday after the first Monday, being the third day of November, A. D. 1896, H. H. Dunn received the highest number of votes cast for the office of State senator for the sixth senatorial district, composed of the counties of Martin and Watonwan, in the State of Minnesota, and was thereupon duly elected to the said office as appears from the official election returns on file in my office.

Witness my hand and official seal at Fairmont, in said county, this twenty-seventh day of November, A. D. 1896.

EDGAR B. SHANKS,
County Auditor, Martin County.

To H. H. Dunn, Fairmont, Minn."

And attached thereto is the corporate or official seal.

By Mr. EVANS: It is understood that all of this testimony is subject to the same objections.

Paper marked as Dunn's "Exhibit B."

Mr. MUNN: On the back of this certificate is the following:

"STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

I, H. H. Dunn, do solemnly swear that I will support the Constitution of — United States and the constitution of the State
79 of Minnesota, and that I will faithfully execute and discharge the duties of the office of State senator from the sixth senatorial district in the State of Minnesota, according to law and the best of my ability and understanding."

(Signed) H. H. DUNN.

Subscribed and sworn to before me this fourth day of January, A. D. 1897.

G. L. HELM,
Deputy Clerk, Supreme Court.

Mr. MUNN: Mr. Evans, will you admit that this is the same certificate that Mr. Dunn presented on the first day of the thirtieth (30) session as that referred to in that portion of the journal which we have offered?

It is admitted that the certificate which has been offered in evi-

dence is the same certificate as that referred to in the journal of the thirtieth session, at the second page thereof, and the same certificate referred to in that portion of the senate journal which was offered in evidence by Mr. Dunn, being referred to therein as his credentials.

Mr. BULLET sworn as a witness on behalf of Mr. Dunn.

Examined by Mr. MUNN:

Q. Where do you reside?
A. Fairmont, county of Martin.
Q. How long have you been there?
A. That county has been my home for the last thirty years.
Q. Do you know Frank A. Day?
A. Yes, sir.
Q. How long have you known him?
A. Ever since he came into the county.
Q. Some years?
80 A. Twenty odd years.
Q. State whether or not you had a conversation with him shortly after he assumed to act as lieutenant governor?
A. Do you wish me to state the conversation?
Q. Did you have such a conversation?
A. I did.
Q. Will you give that conversation?
A. As nearly as I remember it was as follows: We first met in my office, and I congratulated him on the fact of his being lieutenant governor, and we had some little talk in reference to it. I asked him how it was, or whether he could hold the position of senator and lieutenant governor. I expressed my doubts as to his ability to do that. His answer was in substance this: That he didn't know about that. I said, "It seems to me that the moment you took the oath of office for lieutenant governor you ceased to be senator." His answer to that was that he had never filed it.
Q. Never filed what?
A. His oath.
By Mr. EVANS: He said that he had never filed his oath as lieutenant governor?
A. He had not filed it; no, sir.

Mr. MUNN: That is all that we have to offer, aside from the facts which we have prepared.
Mr. EVANS: We had in our prepared statement this clause: "Agreed that the facts be read."
Mr. Munn read as follows:
"That at the general election in the fall of 1894, Frank A.
81 Day was elected as senator from the sixth senatorial district of this State for the term of four years. On the eighth day of January, 1895, he qualified and entered upon the discharge of his duties as said senator, and on the twenty-fifth day of January, 1895, he was duly elected president *pro tempore* of the senate of Minnesota.

On the thirty-first day of January, 1895, Knute Nelson, who was then governor of the State of Minnesota, having theretofore been elected United States Senator for the State of Minnesota, resigned the office of governor of said State, and on the said thirty-first day of January, 1895, the said Clough, who was at and prior thereto the duly elected and qualified lieutenant governor of the State of Minnesota, duly qualified as governor of the State of Minnesota, and entered upon the discharge of his duties as governor of the State of Minnesota. That on said thirty-first day of January, 1895, said Frank A. Day took the chair, and thereafter and up to the time of the close of the twenty-ninth session of said senate, performed the duties of, and assumed to act as, lieutenant governor of the State of Minnesota."

Mr. EVANS: The agreement was that we should not preclude ourselves from drawing the legal conclusions from his acts (that is, that we should not preclude ourselves from drawing the conclusion, the legal proposition, that he was not, in fact, lieutenant governor.)

Reading resumed by Mr. Munn:

" On January 26, said Day signed the warrants for the salaries of the senators and senate employés as president *pro tempore* of
82 the senate. On February 6, 1895, and during the remainder of the session, Frank A. Day signed all the warrants for the salaries of the senators and employés of the senate as president of the senate, and from that time on, said Day signed all warrants as lieutenant governor, and drew the salary of lieutenant governor, receipting therefor as lieutenant governor. Said Day signed all bills passed by the legislature after January 31, 1895, as president of the senate, and not as president *pro tempore;* that on the twenty-third day of April, 1895, and before the senate adjourned, it unanimously elected Hon. Geo. T. Barr, then senator from the tenth senatorial district, president *pro tempore* of the senate.

That from the first day of the session, said Day took part in the debates, voted upon nearly all bills, resolutions and motions that came before the senate and discharged the duties of a senator in the legislature of the State, and from and after the thirty-first day of January, 1895, regularly upon the opening of each session of the senate, and upon every call of the house, and upon any vote upon any bill or resolution taken in the senate, the name of said Frank A. Day was called as one of the senators.

That said Day voted upon more than one hundred bills, or measures pending, and resolutions during that time. That he took part in the debates on many bills and motions, and in other respects performed the duties of a senator. That the senate never, at any time, declared the seat of senator from the sixth sena-
83 torial district of the State of Minnesota vacant, except so far as it may be claimed from the election of Geo. T. Barr, as president *pro tempore*, of the senate, as hereinbefore stated.

That three or four days prior to Oct. 13, 1896, a petition in form, as follows, to wit:

"To the county auditor of the county of Martin, of the State of Minnesota:

Whereas, a vacancy has occurred and now exists in the office of State senator for the sixth senatorial district, for the said State of Minnesota, we, the undersigned, duly qualified electors, residing within said district in said State, in accordance with the law of 1893, chapter 41, and the amendments thereof, do hereby nominate H. H. Dunn, residing at Fairmont, Minnesota, for the said office of State senator, in and for said district, to be voted for at the general election to be held on the third day of November, 1896, the party which said party so nominated represents is the Republican party," was duly circulated in said sixth district, to which petition 504 qualified electors of said sixth senatorial district are attached, which petition was duly verified by oath of the signers thereto, and the same was thereupon filed in the office of the county auditor of Martin county, on the seventeenth day of October, A. D. 1896, and a certified copy thereof duly filed in the office of the county auditor of Watonwan county on the same day.

That thereupon the name of said H. H. Dunn was placed upon the official ballot as the Republican nominee for the office of senator from the sixth senatorial district, and said Dunn received at
84 said election three thousand two hundred and eighty (3,280) votes out of a total of five thousand three hundred and eighty-two (5,382) votes cast, being a majority of 1,378 votes. That at said election the total votes cast for the President of the United States in said sixth senatorial district was 5,255 votes, of which the Republican nominee received 3,352 and the Democrat, 2,395; that at said election the total votes cast for governor of the State of Minnesota, in the said sixth senatorial district, was 5,332, of which the Republican nominee received 2,756, and the Democrat nominee 2,395. That prior to said election said Frank A. Day was nominated by the Democratic and People's party of the second congressional district for Congress, and accepted said nomination, and was a candidate for election to Congress from said second congressional district at said election; that at said election said Day received as said candidate from the counties of Martin and Watonwan, which comprise the sixth senatorial district, 2,309 votes, while the Republican nominee received from said counties 3,003 votes. That prior to said election, and within the time provided by law, certain members of the People's party and Democratic party of said sixth senatorial district circulated a petition for the nomination of F. S. Livermore for the office of senator from the sixth senatorial district in said State and procured the requisite number of names to be attached thereto and filed the said petition in the office of and with the auditor of Martin county, with the request that he check the same over and ascertain if it was all right, and if so, make a certified copy
85 thereof, to be filed with the county auditor of Watonwan county. That after the preparation of such certified copy, and before the same was filed in Watonwan county, the said petition was withdrawn from the office of said auditor of said Martin county.

Mr. EVANS: Mr. Munn, we want it understood in that connection that Mr. Dunn was the only candidate for the senate and the only party voted for.

It was agreed between the parties that Mr. Dunn was the only name placed on the ticket by nomination to be voted for.

Mr. MUNN: I think that is all we care to offer; we would like to reserve the right before the argument to introduce any evidence which may come up.

It is agreed and understood that if there are any facts which Mr. Dunn desires to submit to the committee, the same can be submitted prior or at the time of the argument, hereafter to be fixed, and that Mr. Day shall have the same right.

Mr. EVANS, for Mr. Day: I want to offer that part of the journal which refers to the attendance of Mr. Day on the senate, and the calling of his name on the roll. We wish to offer that part of the journal which shows any action by Mr. Day as a senator from the sixth senatorial district of the State during the twenty-ninth session, his recognition as such, his vote upon bills, and answering to the call of the roll; the fact that his name was always called, and all other facts contained in the journal which relates to his actions or recognition as a senator, and also anything in the journal that bears upon his action as lieutenant governor or as president *pro*
86 *tempore* of the senate; and further, for the purpose of showing that there was no objection made to his acting as a senator, except as is disclosed by the journal, page 390.

Also offer that part of the journal for the purpose of showing that Frank A. Day performed all the duties of senator precisely in the same manner as that performed by the other senators at the same time, and precisely as said Frank A. Day had done prior to the thirty-first day of January, 1895.

Also offer the journal of the thirtieth session of the senate for the purpose of showing the recognition of Frank A. Day and his actions in the senate during this session.

It is also agreed that at the general election of 1896 John L. Gibbs was elected lieutenant governor of the State of Minnesota, and thereafter, on the fourth day of January, 1897, qualified, and has ever since been acting as such.

The following facts are also agreed to:

The candidacy of said Dunn for said office of State senator was generally known and discussed throughout said district and speeches made for and in opposition thereto, and said official ballot, with Dunn's name printed thereon as candidate for the office of senator from said sixth district, was published in the various newspapers in said district from the time of his nomination down to the day of election. No writ of election was issued by the governor of the State to fill a vacancy in the sixth senatorial district. That prior to placing Mr. Dunn's name upon the official ballot the county auditor of Martin county, the senior county of the sixth sen-
87 atorial district, communicated with the attorney general, and was advised by that officer that the only prudent course to pursue was to place Mr. Dunn's name on the official ballot. That

prior to making up the ballot for Watonwan county the auditor of that county communicated with the attorney general, and was advised as was the auditor of Martin county, that the only prudent course to pursue was to place Mr. Dunn's name on the official ballot.

Mr. Yale moved that the subject-matter of the report be made the special order for tomorrow morning at 11 o'clock.

Mr. Stevens moved—

To amend by making the report the special order in committee of the whole tomorrow morning at 11 o'clock.

The amendment was adopted.

The motion was then adopted.

On page 82, being the journal for the eleventh day of said session, January 21, 1897, as follows:

"On motion of Mr. Stevens the senate resolved itself into committee of the whole.

Mr. Greer in the chair.

After some time spent therein the committee arose and reported that they had had under consideration the report of the committee on elections on the question as to who is entitled to the seat of senator from the sixth senatorial district.

On motion, the senate then took a recess till 2 o'clock this afternoon."

And on page 83, being journal of the afternoon session of the same day, as follows:

88 "The senate then resolved itself into committee of the whole for the further consideration of the special order, the report of the committee on elections on the question as to who is entitled to the seat of senator from the sixth senatorial district.

Mr. Greer in the chair."

And on page 84, being journal of the twelfth day of said session, January 22, 1897, as follows:

"The senate then resolved itself into committee of the whole, for the further consideration of the special order of yesterday. The report of the committee on elections on the questions as to who is entitled to the seat of senator from the sixth senatorial district.

Mr. Greer in the chair.

After some time spent therein, the committee arose and reported progress, and asked to sit again."

And on page 85, being the journal of afternoon session of same day, as follows:

"The senate resolved itself into committee of the whole for the further consideration of the special order, the report of the committee on elections, on the question as to who is entitled to the office of senator from the sixth senatorial district.

Mr. Greer in the chair.

After some time spent therein the committee rose and reported progress on the special order, and asked leave to sit again."

On page 86, being the journal of the thirtieth day of said session, January 23, 1897, as follows:

The senate resolved itself into committee of the whole, for
89 the further consideration of the special order; the report of the committee on elections, on the question as to who is entitled to the seat of senator from the sixth senatorial district.

Mr. Greer in the chair.

After some time spent therein the committee rose and reported progress, and asked leave to sit again.

And on pages 87 and 88, being the journal of the afternoon session of the same day, as follows:

"The senate then resolved itself into committee of the whole for the further consideration of the special order of this morning.

Mr. Greer in the chair.

After some time spent therein, the committee rose and repeated that they had had under consideration the special order, the report of the committee on elections on the question of who is entitled to the office of senator from the sixth senatorial district.

Which they report back with the recommendation that the following resolution be adopted:

Resolved, That when this committee arise it recommend to the senate that in its opinion the facts referred to in the report of the committee on elections, created a vacancy in the office of senator in the sixth senatorial district on the thirty-first day of January, 1895, which vacancy continued until the third day of November, 1896, and that H. H. Dunn was on the third day of November, 1896, duly elected to the office of senator from said district and is entitled to his seat as such senator.

Mr. Stevens moved—

90 To amend the report of the committee by the adoption of the following resolution:

Resolved, That by reason of the facts recited in the report of the committee on elections, Frank A. Day is not entitled to the seat of senator from the sixth senatorial district of this State.

Mr. Stevens then moved a call of the senate.

And the roll being called the following senators answered to their names:

Messrs. Barr, Cole, Collester, Cronkhite, Culkin, Currier, Dunham, French, Fuller, Greer, Hanna, Hanson, Heneman, Hodge, Howard, Iltis, Jones, Johnson, A. G., Johnson, W. E., Keller, Knatvold, Larson, Lloyd, Masterman, Miller, Morgan, McArthur, McHale, Ozmun, Peterson, Potter, Pottgieser, Reishus, Ringdal, Roverud, Schaller, Sevatson, Sheehan, Smith, Spencer, Sperry, Stebbins, Stevens, Stockton, Sweningsen, Theden, Thompson, Thorpe, Whitney, Wing, Wyman, Yale, Young.

On motion all further proceedings under the call were dispensed with.

The question being taken on the adoption of the amendment offered by Mr. Stevens,

And the roll being called there were yeas 2 and nays 46, as follows:

Those who voted in the affirmative were:

Messrs. Stevens, Stockton.

Those who voted in the negative were:

Messrs. Barr, Cole, Collester, Cronkhite, Culkin, Currier, Dunham, French, Fuller, Greer, Hanna, Hanson, Heneman, Hodge, Howard, Iltis, Jones, Johnson, A. G., Johnson, W. E., Keller, Knatvold, Larson, Lloyd, Masterman, Miller, McArthur, McHale, Ozmun,
91 Peterson, Potter, Pottgieser, Ringdal, Roverud, Sheehan, Smith, Spencer, Sperry, Stebbins, Sweningsen, Theden, Thompson, Whitney, Wing, Wyman, Yale, Young.

So the amendment was not adopted.

The question then recurred on the adoption of the report of the committee. A division of the resolution was called for, as follows:

Resolved, That when this committee arise it recommend to the senate that, in its opinion, the facts referred to in the report of the committee on elections created a vacan-y in the office of senator in the sixth senatorial district on the thirty-first day of January, 1895, which vacancy continued until the third day of November, 1896.

The question being taken on the adoption of the resolution as divided,

And the roll being called there were yeas 30 and nays 23, as follows:

Those who voted in the affirmative were:

Messrs. Barr, Cole, Collester, Currier, Dunham, French, Fuller, Greer, Hanson, Heneman, Iltis, Jones, Keller, Knatvold, Lloyd, McArthur, Ozmun, Peterson, Potter, Pottgieser, Roverud, Sheehan, Smith, Spencer, Sperry, Stebbins, Sweningsen, Thompson, Thorpe, Wing.

Those who voted in the negative were:

Messrs. Cronkhite, Culkin, Hanna, Hodge, Howard, Johnson, A. G., Johnson, W. E., Larson, Masterman, Miller, Morgan, McHale, Reishus, Ringdahl, Schaller, Sevatson, Stevens, Stockton, Theden, Whitney, Wyman, Yale, Young.

92 So the first part of the resolution was adopted.

The question then recurred upon the adoption of the second part of said resolution, as follows:

"And that H. H. Dunn, was, on the third day of November, 1896, duly elected to the office of senator from said district, and is entitled to his seat as such senator."

The question being taken on this portion of the resolution,

And the roll being called, there were yeas 30 and nays 23, as follows:

Those who voted in the affirmative were:

Messrs. Barr, Cole, Collester, Currier, Dunham, French, Fuller, Greer, Hanson, Heneman, Iltis, Jones, Johnson, W. E., Keller, Knatvold, Lloyd, McArthur, Ozmun, Peterson, Potter, Pottgieser, Roverud, Sheehan, Smith, Spencer, Sperry, Stebbins, Sweningsen, Thompson, Thorpe, Whitney, Wing.

Those who voted in the negative were:

Messrs. Cronkhite, Culkin, Hanna, Hodge, Howard, Johnson, A. G., Larson, Masterman, Miller, Morgan, McHale, Reishus, Ringdahl, Schaller, Sevatson, Stevens, Stockton, Theden, Wyman, Yale, Young.

So the resolution was adopted."

On page 89, being the journal for the fourteenth day of said session, January 26, 1897, as follows:

"Mr. H. H. Dunn then appeared and took the oath of office as senator from the sixth senatorial district.

The president announced that he had appointed Mr. Dunn
93 to all the places on committees made vacant by the unseating of Mr. Day.

Mr. Sheehan resigned as chairman of the committee to investigate the labor bureau.

The president appointed Mr. Dunn as chairman of said committee in place of Mr. Sheehan."

The attention of the court was called to the fact that it appeared at various places throughout the journal of senate of the twenty-ninth session of the legislature, all executive communications incorporated in the journal after January 31, 1895, are addressed "Frank A. Day, president of the senate," and that there was no other record of the final passage of house file number 1, in the journal except that on page 390, above quoted.

The attention of the court was called by the counsel for the relator to the fact that throughout the journal of the twenty-ninth session, it appears that whenever there was a roll-call of the senate, Mr. Day's name was called, and that Mr. Day frequently voted for or against questions before the senate.

Relator read in evidence and called the attention of the court to the following pages of the journal of the senate of the twenty-ninth session of the legislature to substantiate his claim that the said Day assumed the right and was permitted to vote upon pending bills as State senator for the sixth senatorial district during the said session, viz: Pages 120, 126, 134, 137, 138, 139, 140, 143, 147,
148, 149, 152, 153, 164, 168, 169, 171, 177, 178, 186, 188, 189, 195,
197, 202, 204, 224, 226, 232, 233, 251, 252, 260, 269, 270, 271,
94 276, 277, 277, 279, 280, 291, 292, 293, 294, 296, 312, 313, 315,
324, 325, 326, 328, 336, 341, 350, 352, 499, 500, 501, 503, 505,
509, 525, 529, 539, 543, 554, 559, 626, 631, 654, 707, 769, 779, 795,
799, 807, 819.

And to show, furthermore, that the said Day assumed the right and was permitted to act as State senator for the sixth district at the said session, relator read in evidence and called the attention of the court to the following pages of the said senate journal, viz:

1. To show that the said Day was summoned as and regarded a senator in calls of senate made upon motions of senators, the following pages were read: 262, 314, 342, 351, 771, 789.

2. To show that he was permitted, as senator, to present a motion in session, page 322 was read.

3. To show that he acted as a member of the committee of the senate on judiciary, page 320 was read.

4. To show that he was permitted to address the senate on a question of privilege, page 580 was read.

The relator admitted all of the allegations of subdivisions first, second, third and fourth of the answer except it did not admit that the acts therein referred to constitute a contract between the re-

spective railroad companies and the State and did not admit that said acts are not open to repeal.

It was further admitted that the parcel of land described in subdivision second of the answer herein belongs to the Saint Paul and Duluth Railroad Company, and that it was not held, used or
95 occupied for right of way, gravel pits, side tracks, depots, and there were no buildings or structures thereon which were necessarily used in the actual management or operation of said railroad or any part thereof.

It was admitted that the northwest quarter of section seven (7), township forty-seven (47), range twenty-seven (27), Aitkin county, Minnesota, described in the third (3d) paragraph of said answer is the property of the Northern Pacific Railroad Company, and it was further admitted that it is not held, used or occupied for right of way, gravel pits, side tracks, depots, and that there are no buildings or structures thereon which are necessarily used in the actual management and operation of said railroad.

It was further admitted that the northwest quarter of the southwest quarter of section fourteen (14), township forty-seven (47), range twenty-seven (27), is the property of the Great Northern Railway Company, and that it is not held, used or occupied for right of way, gravel pits, side tracks, depots, and that there are no buildings or structures thereon which are necessarily used in the actual management and operation of said railroad.

It was admitted that house file number one (1) of the legislature of 1895, of which chapter one hundred and sixty-eight (168) of the General Laws of 1895 is a copy, was, after being engrossed and enrolled, signed by Frank A. Day, as president of the senate, and transmitted to the governor for his approval.

It was also admitted that the copy of the ballot attached to the defendant's answer herein is a copy of the ballot prepared by
96 the secretary of state, and used for the election of State officers at the general election, November, 1896.

Plaintiff rests.

Defendant at this time moves that the alternative writ of mandamus herein be discharged, and that the defendant be permitted to go without day for the reason that there is no proof that there is any law under which these lands are subject to ordinary taxation, and no proof that the laws under which the exemption is pleaded and claimed have been amended or repealed.

Motion denied. Defendant duly excepted.

Defendant rests.

Thereupon the case was fully argued by counsel for both parties and taken under advisement by the court.

It is hereby stipulated that the foregoing may be settled and allowed as the settled case in the above-entitled proceeding.

Dated St. Paul, November —, 1897.

A. Y. MERRILL,
H. W. CHILDS,
Attorneys for Relator.
HADLEY & ARMSTRONG,
Attorneys for Defendants.

The foregoing having been examined by me and found by me to be conformable to the truth, it is hereby settled and allowed as the settled case in the said cause, and I hereby certify that the same contains all the evidence and proceedings had before me upon the trial of said action.

Dated Brainerd, January 11, 1898.

G. W. HOLLAND,
District Judge.

97 STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Notice of Appeal.

You will please take notice, that the above-named defendant appeals to the supreme court of the State of Minnesota, from the judgment of this court in this action, entered on the sixteenth day of December, 1897.

Dated January 13, 1898.

HADLEY & ARMSTRONG,
Attorneys for Defendant.

To H. W. Childs and A. Y. Merrill, attorneys for plaintiff; and Frank E. Seavey, clerk of the district court.

98 STATE OF MINNESOTA, }
County of Aitkin. }

District Court, Fifteenth Judicial Dist.

STATE OF MINNESOTA on Relation of JAMES N. MARR, Plaintiff, }
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minn., Defendant. }

Waiver of Bond.

The undersigned, attorneys for the plaintiff in the above-entitled action, hereby waive the appeal bond for costs upon the appeal of the defendant from the judgment rendered in the above-named court on the sixteenth day of December, A. D. 1897.

A. Y. MERRILL,
H. W. CHILDS,
Attorneys for Plaintiff.

99 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898. No. 31.

STATE *ex Rel.* J. N. MARR, Respondent,
vs.
FRED STEARNS, as County Auditor of Aitkin County, Appellant. } 11037. Syllabus.

1. The president *pro tempore* of the State senate does not cease to — a senator when he becomes lieutenant governor by reason of a vacancy in the office of governor and a corresponding vacancy in the office of lieutenant governor.
2. Held, that chapter 168, Laws 1895, relating to the taxation of railroad lands was duly enacted and properly submitted at the general election of 1896 to the electors for adoption and ratification as required by the constitution.
3. The existence of a public law, whether it be in the form of a statute or a constitutional amendment, is a fact of which courts must take judicial notice. If, as in this case, its validity depends on the fact whether it was ratified by a majority vote of all the electors voting at the election at which it was submitted, the court will take judicial notice of the number of ballots cast at the election and the number cast for the law, and inform itself as to such facts by resorting to the election returns and records in the office of the secretary of state or in the offices of the several county auditors or by any other means it deems safe and proper.

100

4. Held, that the law here in question was adopted and ratified by a majority of all the electors voting at the election at which it was submitted.
5. The statutes of this State, enacted subsequently to the adoption of the constitution, providing for a commuted system of taxation of the property of railroad companies by permitting them to pay an annual gross-earnings tax in lieu of the taxation of their property on the basis of a cash valuation, were unconstitutional until validated by the constitutional amendment of 1871, art. IX, s. 32*a*. Such validation was a qualified one, the right to repeal or amend the statutes being reserved; hence, chapter 168, Laws 1895, does not impair the obligations of any contracts and is constitutional.

Judgment affirmed.

101 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898. No. 31.

STATE OF MINNESOTA *ex Rel.* J. N. MARR, Respondent,
vs.
FRED STEARNS, as County Auditor of Aitkin County, Appellant. } 11037.

Opinion.

This is an appeal from the judgment of the district court of the county of Aitkin, adjudging that a peremptory writ of mandamus issue directing the appellant as county auditor to place three certain parcels of land upon the tax-list of the county for the year 1897. The first tract is the property of the St. Paul & Duluth Railroad Co., the second is owned by the Northern Pacific Railroad Co., and the last belongs to the Great Northern Railway Co.

Each of the railway companies acquired its land by grants from the State or United States made after the adoption of our Constitution, and all statutes affecting the question of their taxation were enacted subsequently to that event. No part of the lands here in question are in any manner connected with or used in the operation of the railways of the respective companies, and they do not and will not, when sold, increase the aggregate of the gross earnings of the companies upon which they pay a tax.

The trial court held, in effect, that these lands are now taxable by virtue of the provisions of ch. 168, Laws 1895, relating to the taxation of certain lands owned by railroad companies. The appellant claimed that this chapter was never enacted by the legisla-
102 ture nor submitted to and adopted and ratified by the electors of the State, but if it was it is void because it impairs the contract between the State and the railroad companies as to taxation of their lands and other property.

1. The first objection made to this statute is to the effect that it did not receive in the State senate the necessary vote of a majority of the members elected to that body, because the Hon. Frank A. Day, who voted for the bill and whose vote was necessary to pass it, was not then a senator and his vote thereon was void. Assuming that the question whether this statute ever passed the senate depends upon the legality of Mr. Day's vote, we hold that his vote was not a nullity and that the bill was properly passed. The undisputed facts as to this question are that Mr. Day was duly elected as a senator from the sixth senatorial district of this State for the term of four years, commencing January, 1895. He qualified, entered upon the duties of the office, and on January 25th, 1895, became president *pro tempore* of the senate. Six days thereafter Governor Nelson resigned and Lieutenant Governor Clough became governor, and thereafter and until the close of the twenty-ninth session of the senate Mr. Day performed the duties of and acted as lieutenant governor. He also until the close of the session continued to act and vote as senator with the tacit

approval, at least, of the senate. Upon the opening of each day's session of the senate and upon every call of the house and upon all votes taken upon any bill or resolution his name was regularly called as one of the senators. The conclusion which the appellant claims from these facts is that Mr. Day *ipso facto* became lieutenant governor when Governor Clough became governor, and that thereafter he was not and could not under the constitution be
103 a senator either *de jure* or *de facto*. This conclusion is based upon the proposition that whenever the lieutenant governor becomes governor during a vacancy in that office for any cause, and the president *pro tempore* becomes lieutenant governor by reason of a vacancy in the latter office, his office as senator becomes absolutely vacant.

The provisions of the constitution which have a bearing directly or indirectly on this question are these:

(*a.*) The powers of government shall be divided into three distinct departments—legislative, executive, and judicial—and no person or persons belonging to or constituting one of these departments shall exercise any of the powers belonging to either of the others, *except in the instances expressly provided in this constitution.*

The legislature of the State shall consist of the senate and house of representatives.

The executive department shall consist of a governor, lieutenant governor, &c.

The lieutenant governor shall be *ex officio* president of the senate, and in case a vacancy shall occur from any cause whatever in the office of governor he shall be governor during such vacancy. The compensation of a lieutenant governor shall be double the compensation of a State senator. Before the close of each session of the senate they shall elect a president *pro tempore*, who shall be lieutenant governor in case a vacancy shall occur in that office. Art. 3, sec. 1; art. 4, sec. 1; art. 5, sec. 1 and 6.

(*b.*) Each house shall be the judge of the election returns and eligibility of its own members. The house of representatives shall elect its presiding officer. No senator or representative shall
104 during the time for which he is elected hold any office under the authority of the United States or the State of Minnesota except that of postmaster. Every bill having passed both houses shall be carefully enrolled and shall be signed by the presiding officer of each house. Art. 4, ss. 3, 5, 9.

(*c.*) The house of representatives shall have the sole power of impeachment. All impeachment shall be tried by the senate, and when sitting for that purpose the *senators* shall be upon oath. All the offices in the executive department (except the lieutenant governor) and the judges of the supreme and district courts may be impeached and removed from office for corrupt conduct therein. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal. On the trial of an impeachment against the governor the lieutenant governor shall not act as a *member of the court.* Art. IV, s. 14 and, art. XIII, ss. 1, 3, 4.

The constitution was intended to provide a complete and har-

monious scheme of State government, and to provide against the possibility of any interregnum in the office of governor, or interruption in the exercise of the functions and powers of that office. The several provisions of the constitution we have quoted were adopted at the same time, and must be construed together as a whole and with reference to the purposes for which the constitution was ordained. It is not permissible to select a single isolated provision and give it effect according to its literal reading without reference to modifications made by the express language of other provisions of the instrument.

The contention of the appellant that whenever there is a vacancy in the office of lieutenant governor the president of the senate *pro tempore* becomes as fully and completely lieutenant governor for the residue of the term as if he had been originally elected, and thereupon his office of senator becomes absolutely and permanently vacant as to him, cannot be sustained without disregarding both the letter and spirit of *of* the constitution, when considered as a whole, and without adopting a construction well calculated, when party strife and spirit are intense, to disturb the public peace and order. If, as claimed, the president *pro tempore* of the senate becomes lieutenant governor for the residue of the term in case of a vacancy in that office, it necessarily follows that the lieutenant governor when he becomes governor in case of a vacancy in the latter office for any cause holds that office for the residue of the term; or, in other words, if a vacancy from any cause in the office of governor or lieutenant governor occurs it is necessarily an absolute and permanent one. This proposition, if correct, would logically tend to support the further claim that when the president *pro tempore* once becomes lieutenant governor his office of senator is absolutely and permanently vacant as to him. On the other hand, if the constitution recognizes both permanent and temporary vacancies in the offices of governor and lieutenant governor such fact has an important bearing on the question whether the president *pro tempore* ceases to be a senator when he becomes a lieutenant governor. This brings us to the consideration of the meaning of the word vacancy as used in the constitution in reference to the office- of governor and lieutenant governor.

The constitution provides that the lieutenant governor shall be *ex officio* president of the senate, and in case a vacancy shall occur *from any cause whatever* in the office of governor he shall be governor during such *vacancy*, but it does not in express terms declare when or for what causes a vacancy shall exist in the office of governor. The language used, however, clearly implies that such vacancy may occur from several causes, and may be either permanent or temporary. This was the construction given to the constitution by the first legislature convened after its adoption, which provided that in case of death, *impeachment*, resignation, or removal of the governor from office, the lieutenant governor shall exercise the office of governor until he be *acquitted* or another governor shall be duly qualified. Laws 1858, ch. 87, sec. 10. Again, within a few years after the adoption of the constitu-

tion and during the civil war the lieutenant governor, as governor *ad interim*, exercised the powers and discharged the duties of the office of governor during the necessary absence of the governor from the State.

The governor may be impeached, but he is forbidden by the constitution to exercise any of the duties of his office after he has been impeached and before his acquittal. The time between the preferring of articles of impeachment against him by the house of representatives and the close of his trial by the senate may be several months. The office cannot remain vacant during such time, for there can be no suspension of the powers and duties of the office of chief executive. The power and duty to command the military forces of the State, to execute the laws, to suppress riots and insurrections, to fill vacancies in office, and to grant and demand the surrender of fugitives from justice are of necessity continuous, and the necessity for their exercise may arise at any time. The powers of the office must be exercised during such vacancy by some one, and the constitution provides that the lieu-
107 tenant governor shall be governor during such vacancy.

Necessarily, in case of the impeachment of the governor, such vacancy may be either permanent or temporary, depending on the verdict of the senate. If it convicts, the vacancy is permanent. If it acquits, it is temporary. If the vacancy in the office of governor occasioned by his impeachment is not to be filled, the State government is without an executive head for months. But if the vacancy is filled by the lieutenant governor, and he thereby becomes governor "as fully and completely as though he had been legally elected in the first instance to that office," then to prefer articles of impeachment against the governor is to remove him permanently from office, although the senate promptly acquit him. Such a construction of the constitution would be a menace to the peace and order of the State.

If the governor is incapacitated by illness so that he cannot exercise the powers of his office, then, if the proposition contended for by the appellant is correct, either the office must remain vacant during his illness or be filled by the lieutenant governor for the balance of the term. In such a case there is no escape from the conclusion that either there is to be an interregnum in the office of governor during his illness, which may or may not continue to the end of his term, or that his illness at once permanently removes him from office, although he speedily recovers. A construction of the constitution which would lead to the results suggested by these illustrations must be rejected.

It is clear that the vacancy in the office of governor provided for by the constitution may arise from a variety of causes, such
108 as his death, resignation, impeachment, illness, or absence from the State; that it is necessarily permanent or temporary, according to the facts of each case; that the lieutenant governor is governor only during such vacancy, and that in case of a temporary vacancy he is governor only for the time being, and when the tem-

porary vacancy ends the governor returns to his office and the lieutenant governor to his.

A corollary of this proposition is that the vacancy in the office of lieutenant governor, upon the occurrence of which the president *pro tempore* of the senate becomes lieutenant governor, is of the same character as the vacancy in the office of governor. The vacancy in the office of lieutenant governor may be permanent or temporary, depending on the character, cause, and duration of the vacancy in the office of governor. Such being the case, the president *pro tempore* when he becomes lieutenant governor for the time being during such vacancy ought not to be held to be no longer a senator unless the express words of the constitution imperatively require such a construction. There are no such words or provisions in the constitution and such a construction cannot be given to it and at the same time give effect to other provisions of that instrument. All of the reasons we have suggested why the office of lieutenant governor does not become absolutely and permanently vacant as to that officer as soon as he is called upon to act as governor during a temporary vacancy apply with greater force to the president *pro tempore* of the senate, for if the senatorial office of the president *pro tempore* is rendered absolutely vacant as to him by his becoming lieutenant governor, then such a result follows upon the happening of the first vacancy in the office of governor for any cause or for any duration; and in case such vacancy is only temporary, then at its termination the governor resumes
109 his office, the lieutenant governor his, and the president *pro tempore* will be out of office entirely and the people of his district deprived of the right to be represented in the senate until his successor can be elected. There is no language in the constitution requiring or justifying the conclusion that the senatorial office of the president *pro tempore* becomes vacant when he becomes lieutenant governor by reason of and during a vacancy in the office of governor. On the contrary, there is no escape from the conclusion that the president *pro tempore* does not cease to be a senator when he becomes lieutenant governor by reason of a vacancy in the governor's office. This conclusion is further supported by the character of the duties of lieutenant governor and of the president *pro tempore*. They are identical. Neither of them has any power or duty properly belonging to the executive department. True, the lieutenant governor is declared to be an officer of the executive department and that no person belonging to one of the departments shall exercise any of the powers properly belonging to either of the others except in instances expressly provided for by the constitution; but the fact remains that his classification is simply one of convenience and that he is not authorized to exercise a single power or perform a single duty as lieutenant governor properly belonging to the executive department. His sole constitutional duties are to preside over the senate (he is not a member thereof, and has no vote even in cases where the senators are evenly divided) and to authenticate by his signature the bills passed by the senate. These duties and powers belong strictly and properly to

the legislative department. They are the precise duties imposed by the constitution on the presiding officer of the house of
110 representatives, and there is just as much reason for claiming that the speaker of the house when elected ceases to be a member thereof as there is to claim that a senator who is president *pro tempore* ceases to be a senator when he becomes lieutenant governor.

That it was not intended by the constitution to confer executive powers upon the lieutenant governor as such is also apparent from the fact that he cannot be impeached, although all the other officers of the executive department may be. A senator, therefore, when he becomes lieutenant governor because he happens to be president *pro tempore* of the senate, is not called to the discharge of any executive duties. All of his new duties properly belong to the legislative department, and there is no reason why his senatorial office should become vacant, but every reason to the contrary. There is just as much warrant in the constitution for claiming that a senator ceases to be such when he is elected president *pro tempore* as there is to claim that such result follows when he becomes lieutenant governor.

It is suggested that the constitution does not require the senate to elect one of its own members its president *pro tempore*. Neither does it expressly require that the presiding officer of the house of representatives shall be a member thereof; but from the adoption of the constitution to the present time the presiding officer of the senate and house has always been a member of the body over which he was elected to preside. This practical construction of the constitution is the correct one, with the possible qualification that no senator under the age of twenty-five years can be elected president *pro tempore* for the reason that both the governor and lieutenant
111 governor must be at least twenty-five years of age.

The prohibition of the constitution that no senator or representative *shall during the time* for which he is elected hold any office except that of postmaster is relied upon by counsel for appellant in support of the proposition that when Mr. Day became lieutenant governor he ceased to be senator. They state in one of the briefs the argument thus: "That the two offices of lieutenant governor and senator are incompatible is made explicit by this provision. The result must follow that Mr. Day having become lieutenant governor he ceased to be senator." If the premises of counsel are correct they are fatal to their conclusion, for Mr. Day was a senator before he was either president *pro tempore* or lieutenant governor. He was a *de jure senator* constitutionally elected for the term of four years, *during which time* he was prohibited from holding any other office under the authority of the State even if he had resigned the office of senator. The result must follow from a literal reading of the section that, being ineligible to any other office, he continued to be a *de jure senator*. It is obvious that this section of the constitution does not explicitly or otherwise make the two offices of lieutenant governor and senator incompatible nor a senator ineligible to the office of lieutenant governor during the term for which he

was elected, for it is otherwise expressly provided by the constitution that a senator who is president *pro tempore* shall become lieutenant governor in case of a vacancy. Indeed, this particular section has but little relevancy to the question under consideration except to emphasize the necessity of construing the several provisions of the constitution as a harmonious whole and not each section by itself.

112 There remains one other provision of the constitution to be considered in this connection, which is inconsistent with the appellant's claim: "On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court." This is an express recognition of the fact that a senator may be a lieutenant governor, for the court for the trial of impeachments is the senate, and it is composed exclusively of senators who shall be upon oath. If in such cases the lieutenant governor was not also a senator, he could not take the oath as senator and act as a member of the court, but the constitution provides for cases where the lieutenant governor is also a senator, and would, except for this express prohibition, be entitled to act as a member of the court as senator. This prohibition would be wholly unnecessary except upon the assumption that a senator did not vacate his office on becoming lieutenant governor.

Our conclusion is that Mr. Day did not cease to be senator when he became lieutenant governor.

2. Was the law, chapter 168, Laws 1895, submitted to the electors in compliance with the constitution and the statute? We answer the question in the affirmative. The constitution, art. IV, s. 32*a*, adopted in 1871, provides as follows:

"Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this State or operating its road therein, or which may be hereafter organized, shall in lieu of all other taxes and assessments upon their real estate, roads, rolling stock, and other personal property, at and during the time and periods therein specified, pay into the treasury of this State

113 a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall, before the same shall take effect and be enforced, be submitted to a vote of the people of the State, and be adopted and ratified by a majority of the electors of the State voting at the election at which the same shall be submitted to them."

The form of the submission of the act in question to the electors, as printed on the ballot, was this:

For taxation of railroad lands	Yes.	
	No.	

The appellant claims that "the form of ballot adopted was a cunning political device to catch votes; an evasion of the constitu-

tion, which requires that the law itself shall be submitted to the voters;" hence it was never submitted to the vote of the people. The question here is not whether the form of the ballot selected by the legislature is the best and fairest that could have been framed by a trained lawyer, but it is, Did the form of ballot actually used comply with the constitution? Neither the form nor the manner of submitting the question of the amendment to the people is prescribed by the constitution. They are left to the judgment and discretion of the legislature, subject only to the implied limitation that they must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote. It cannot be claimed, in reason or justice, that this case falls within this limitation. The form was prescribed by the act itself, which was a public statute so far as it was in the power of the legislature to make it such. It was published with the
114 general laws of 1895, and fully advised the electors, not only as to the provisions of the act, but also how they were to express their decision upon the question of ratifying the act. The constitution requires that all amendments to that instrument shall be submitted to the people for their approval or rejection. There is no essential difference between this requirement and the one as to the submission of the law in question; therefore, if it was necessary to print the law upon the ballot or refer to it by its title, then the same particularity would be required in submitting constitutional amendments. Such, however, has not been the legislative or practical construction of the constitution, for there are a large number of important amendments to the constitution which were submitted by a ballot upon which there was no suggestion as to the nature of the amendment. It has never been suggested that such amendments are void. The act in question was properly submitted to the people.

3. The act under consideration is further assailed on the ground that it was not ratified by the popular vote. The law was submitted to the people at the general election of 1896 and there were cast and counted for it 235,585 votes and 29,530 votes against it, but by virtue of the constitution it was not adopted and ratified unless a majority of all the electors who voted at the election voted for it. A majority in favor of it of all the votes cast upon the proposition is not sufficient. It is conceded that the vote on the proposition was as we have stated. It is then mathematically true that the law was adopted by a majority of all of the electors, unless there were cast at the general election of 1896 at least 471,170 ballots.
115 Courts will take judicial notice of whatever is generally known within the limits of their jurisdiction.

1 Greenleaf Ev., s. 6.

Lanfear *v.* Gestier, 89 Am. Dec., 663; *notes.*

Now, every intelligent man in the State knows, from the census and election returns and the general and political history of the State, that there were not cast at the last general election 471,170 votes. We do not, however, rest our conclusion that this law re-

ceived a majority of all the votes cast at the election upon this ground, but upon the broad ground that the existence of a public law is a fact of which courts will take judicial notice without pleading or proof. Judicial notice does not depend upon the actual knowledge of the judges. When the fact is alleged they must investigate, and may refresh their recollections by resorting to any means which they may deem safe and proper.

Brown *v.* Piper, 91 U. S., 42.

Gardiner *v.* Collector, 6 Wall., 499.

Courts, however, do not take judicial notice of votes and elections, except so far as they affect the validity of some public law. The rule is stated by Judge Brewer in these words: "The courts are to know what is and what is not a public law of the State; what is and what is not a part of the constitution, and to that end must take judicial notice of everything, near or remote, that determine such fact. The courts take judicial notice of what is public law, statutory or constitutional. When a majority of the electors voting on an amendment at an election properly ordered adopts it, then it becomes a part of the constitution. So the constitution
116 itself says. The courts must judicially know whether such amendment has been adopted and is in fact a part of the constitution, and to that end, if need be, must take judicial notice of every ballot cast at that election." It, the rule, is stated in State *v.* Cooley, 56 Minn., 554, thus: "Courts will take judicial notice of all facts bearing on the constitutionality of the law."

The validity of this law depends upon the fact whether it received a majority of all of the votes cast at the election, not on the subsequent act or omission of the State canvassing board or of any other officers. For the purpose of determining this fact the court will take judicial notice of the election records, returns and canvass thereof by the State board in the office of the secretary of state, and, if necessary, of the election returns and canvass in the offices of the several county auditors of the State. We have found it necessary to refer only to the election returns and records in the office of the secretary of state and have there found appropriate, clear, and satisfactory information upon the question whether the act was adopted and ratified by a majority of the electors voting at the election, and are able to and do answer the question in the affirmative.

The election returns in the office of secretary of state on December 22, 1896, when the votes were canvassed by the State board, showed that the total number of ballots cast at the last general election was 343,319, but no returns as to the total number of ballots cast had then been received from seven counties, and the board made no declaration to the effect that the law had been adopted; their certificate gave only the vote for and against the proposition. Shortly after the canvass and before the trial of this action in the dis-
117 trict court, returns certified by the county auditor were received from each of the seven counties, giving in the aggregate the total number of ballots cast at the election in his county. These returns show that the total ballots cast in the seven counties were 17,979, which added to the 343,319 previously returned from the

other counties give 361,298 as the total number of ballots cast at the election. As no elector was authorized to cast more than one State ballot, it follows that 361,298 electors voted at the election, and no more. It was therefore necessary that 180,650 votes should be cast for the law in order to adopt it. It received 235,585 votes, or 54,935 more than were legally necessary.

4. This brings us to the last contention of the appellant. It is, in effect, that the several statutes of the State providing for the payment by the several railway companies of a gross-earnings tax in lieu of taxation of their property in specie are irrevocable contracts between the State and the companies, the obligations of which chapter 168, Laws 1895, impairs.

It must be conceded, in obedience to the decisions of the Supreme Court of the United States, that a State may by its legislature, in the absence of constitutional inhibitions, irrevocably limit or contract away its right of taxation.

It is, however, as decisively settled by the same court that the taxing power of the State will not be held to have been surrendered or limited unless such surrender is expressed in terms too clear to admit of a doubt. It must be expressed in clear, unambiguous language which will admit of no reasonable construction
118 consistent with the reservation by the State of the unimpaired power of taxation, for it is a sovereign power absolutely essential to the continued existence of the State.

It is not necessary to here set out the terms of the several statutes under which it is claimed that the lands of the railway companies are exempt from taxation in the usual manner of taxing real estate. They in effect provide for a commuted system of taxing railroad property by permitting the railway companies to annually pay to the State a specified percentage on their gross earnings in full of all other taxes and assessments on their property. The St. Paul & Duluth and the Northern Pacific accepted the provisions of these statutes. The Great Northern never has.

Under the canon of construction applicable to statutes which are claimed to irrevocably limit or absolutely relinquish the power of taxation by the State, it is not clear that the statutes here in question can be construed as irrevocable contracts, for the language used is not so specific as to preclude all argument, inference, or presumption against the claim of the appellant. The statutes do not contain any express stipulations that the percentage shall not be increased or diminished or the system of taxation changed to meet changed conditions in the future. What might have been a fair and equal gross-earnings tax when these statutes were enacted might be grossly unequal under changed conditions, such as an increase in the value of the land grants of the companies or the necessity for an increase in the rate of taxation for State, county, school, and local purposes; but it is not our purpose to decide the question here suggested, for we place our decision that the statutes under which the railroad companies claim do not constitute irrevocable contracts be-
119 tween them and the State that their lands shall never be taxed as other land is taxed by the State upon the broad

ground that when the statutes were enacted they were unconstitutional.

Such statutes were in violation of article IX, ss. 1 and 3 of the constitution, the here material provisions of which are: "Sec. 1. All taxes to be raised in this State shall be as nearly equal as may be and all property on which taxes are to be levied *shall have a cash valuation* and be equalized and uniform throughout the State. Sec. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also *all real estate and personal property according to its true value in money.*"

Section three also expressly exempts certain property from taxation. If it be conceded that a commuted system of taxation, whereby a percentage on gross earnings is accepted in lieu of taxation of railway property in specie, might be so adjusted as not to be obnoxious to the constitutional requirement of uniformity and equality of taxation, it is clear that an irrevocable contract, fixing for all future time the rate of taxation on such gross earnings, would not continue to be uniform and equal taxation, because the value of property changes from time to time and the necessities of the State also change, demanding an increased rate of taxation. This is especially true as to town, village, city, and county taxes. But uniformity and equality of taxation are not the only mandates of the constitution, for it further commands that all property on which taxes are to be levied (that is, all property not exempt from taxation) shall have *a cash valuation*, and that laws shall be passed taxing all real and personal property according to its *true* 120 *value in money.*

The language of the constitution is clear, exact, and imperative. It requires that all property not exempt must be taxed, and that the basis of such taxation must be the cash value of the property. As was said by this court in the case of Rice County *v.* Citizens' National Bank, 23 Minn., 287:

"The leading and controlling purpose of these provisions was to subject all property of every kind and nature within the jurisdiction of the State, except such as is specially authorized to be exempted, to taxation upon a basis of a cash valuation and to secure, so far as practicable, absolute equality and uniformity in the apportionment of taxes, so that every piece of property should bear its just and proportionate share of the public burden in the exact ratio of its cash value to that of the entire taxable property of the State."

It may be true, as claimed, that a gross-earnings tax (if subject to amendment) is only another mode of arriving at equal taxation, and that such a system of commuted taxation of the property of railway companies and similar corporations is of great practical and material advantage to the State, but the fact remains that the taxation of all property upon the basis of its cash value was the sole rule ordained by the constitution to secure equality and uniformity of taxation. Thus, in Stinson *v.* Smith, 8 Minn., 366 (which arose before the amendment to the constitution as to assessments for local improvements), it was held that a statute providing for the assessment of the cost of such improvement upon real estate in propor-

tion to benefits was unconstitutional because all property on which taxes are to be levied must have a cash valuation. A com-
121 muted system of taxation of mining lands, property, and products by the payment of a tonnage tax on all ore mined and disposed of, in lieu of all other taxes, was held invalid by this court because in conflict with article IX, sec. 1, of the constitution.

State *v.* Lakeside Land Co., 73 N. W., 970.

There is no decision of this court which holds that statutes of the State providing for the payment of a gross-earnings tax by railway companies and exempting their property from taxation in specie upon the basis of a cash valuation were constitutional prior to their ratification by the amendment of 1871, art. IX, s. 32*a*.

There is a clear intimation to the contrary in several cases, notable in those which follow the Parcher case, 14 Minn., 297, sustaining the validity of territorial statutes providing for a gross-earnings tax for the old land-grant railway companies—that is, those which are organized under charters granted prior to the adoption of the constitution.

It is further claimed on behalf of the appellants that the mandates and inhibitions of the constitution as to the taxation of all private property have no application to public lands which passed into private ownership with the privilege of commuted taxation created with respect to them while they were yet public lands. If this proposition is true, then the legislature, if there are no other constitutional provisions prohibiting it, may provide for exempting from taxation the school lands of the State after their sale and after they have become absolutely private property, or provide that the owners thereof may forever pay a percentage on the gross or net income derived therefrom in lieu of all other taxes.

The mandate of the constitution applies to all property which is the subject of private ownership, without reference to the
122 source of its acquisition. It would be a palpable evasion of the constitution to permit the legislature to absolutely transfer public lands to private owners vested with privileges and immunities as to taxation which are prohibited by the constitution.

We hold that the statutes under which it is claimed that the lands in question are exempt from taxation in the ordinary way upon the basis of their cash valuation were unconstitutional when enacted, and remained so until validated by the constitutional amendment of 1871.

The legal effect of such amendment was to validate them.

State *v.* Luther, 56 Minn., 156.

But this ratification or validation of the statutes was a qualified one, and the right to repeal or amend them was reserved by necessary implication, provided such repeal or amendment was adopted and ratified by a majority of the electors.

Our conclusion is that chapter 168, Laws 1895, does not impair the obligation of any contract between the State and railway com-

panies, and that the lands here in question are taxable in the ordinary way as other lands are taxable.

Judgment affirmed.

START, *C. J.*

123 [Endorsed:] No. 11037. State of Minnesota, supreme court. State *ex rel.* J. N. Marr, respondent, *vs.* Fred Stearns, as county auditor, etc., appellant. Copy of opinion and syllabus. Original. Filed May 11th, 1898. D. F. Reese, clerk. April term, A. D. 1898. Start, C. J.

124 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

STATE OF MINNESOTA *ex Rel.* JAMES N. MARR, Respondent,
vs.
FRED STEARNS, as County Auditor of Aitkin County, Minnesota, Appellant, } No. 31.

Pursuant to an order of court duly made and entered in this cause on the 20th day of June, A. D. 1898—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the fifteenth judicial district, sitting within and for the county of Aitkin, be, and the same hereby is, in all things affirmed; and it is further determined and adjudged that the respondent above named do have and recover of said Fred Stearns, as county auditor of Aitkin county, Minnesota, appellant herein, the sum and amount of one hundred sixty-one and $\frac{50}{100}$ dollars ($161.50), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 20th day of June, 1898.

By the court:

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$
Clerk's fees, for making return	
Printer's fees	150.00
Clerk's fees, supreme court	11.50
Filing mandate	
Affidavits and acknowledgments	
Postage	
Copying returns for printer	
	$161.50

125 [Endorsed:] 11037. State of Minnesota, supreme court. Transcript of judgment. Filed June 20, A. D. 1898. D. F. Reese, clerk. —— ——, attorney for —. Page No. 61, "W" book.

STATE OF MINNESOTA, *ss*:

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this twentieth day of June, A. D. 1898.

D. F. REESE, *Clerk*.

126 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

STATE OF MINNESOTA *ex Rel.* JAMES N. MARR, Respondent, *vs.* FRED STEARNS, as County Auditor of Aitkin Co., Minn., Appellant.	No. 31. Appeal from District Court, Fifteenth Judicial District, County of Aitkin.

This cause having been duly argued and submitted at the general April term of this court, A D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered June 20, A. D. 1898.

By the court:

Attest: D. F. REESE, *Clerk*.

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk*.

127 [Endorsed:] No. 11037. State of Minnesota, supreme court. Copy of order for judgment. Filed June 20, A. D. 1898. D. F. Reese, clerk. Entered on page 173, M.

128 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1898.

THURSDAY MORNING, 9.30 O'CLOCK, *April 7, A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

STATE OF MINNESOTA *ex Rel.* JAMES N. MARR, Respondent,
vs.
FRED STEARNS, as County Auditor of Aitkin Co., Minn., Appellant.
Cal. No., 31.
Reg. No. 11037.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*
R.

129 [Endorsed:] 11037. State of Minnesota, supreme court. Copy of minutes of argument. Filed June 20, A. D. 1898. D. F. Reese, clerk.

130 [Endorsed:] No. 11037. State of Minnesota, supreme court. State of Minn. *ex rel.* Jas. N. Marr, respondent, against Fred Stearns, as county auditor of Aitkin Co., appellant. Judgment-roll. Filed June 20, 1898. D. F. Reese, clerk.

131 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, *Office Clerk of Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify and return that the foregoing and attached papers are a full, correct, and complete copy of all the papers on file in my office in the action therein entitled and of the whole thereof; also the original citation and proof of service thereof and original writ of error and assignments of error to the Supreme Court of the United States, and the same constitutes and is the full and complete return to the writ of error issued and allowed in said cause.

In witness whereof I hereto subscribe my name and affix the seal of the supreme court of the State of Minnesota, at the capitol, in the city of St. Paul, this 27th day of June, A. D. 1898.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of the State of Minnesota,
By J. L. HELM, *Deputy.*

Endorsed on cover: Case No. 16,929. Minnesota supreme court. Term No., 344. Fred Stearns, as county auditor of Aitkin county, Minnesota, plaintiff in error, *vs.* The State of Minnesota on the relation of James N. Marr. Filed July 11th, 1898.